

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-  
  
CARMINE TRAMUNTI, et al.,  
  
Defendants-Appellants.

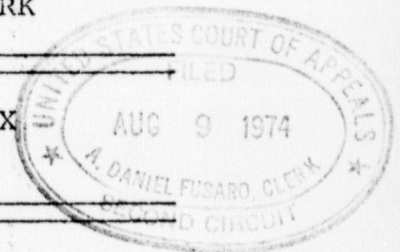
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(20) - Pages 2664a to 2773a

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1                    hpa3  
2                    THE COURT:     On the third page of 3573,  
3                    paragraph 8, second sentence, "The cooperating individual  
4                    further stated that individual who he knows as (blank)  
5                    told Robinson that he" -- and then leave the word "he"  
6                    in, and at the end of the sentence, the end, the word  
7                    should be "him."

8                    I have a little difficulty with 3575A for  
9                    identification.     Until I get a copy and read it I can't  
10                   rule on it.     Until I get the copy I am not going to rule.  
11                   Until I rule you are not going to cross.

12                   I would suggest we take 10 minutes and who-  
13                   ever is in charge of finding 3575A for identification  
14                   come ahead.     That's not the copy that you people re-  
15                   ceived.

16                   MR. LEIGHTON:     Is your Honor saying the  
17                   portions deleted on 3573, we are not going to be entitled  
18                   to the original of this?

19                   THE COURT:     Those portions have absolutely  
20                   nothing to do with the trial of this case.     I have  
21                   gone through 3573.     My problem now is 3575, which I  
22                   can't read.

23                   All right, we will take 10 minutes.     The  
24                   reason I am suggesting we come back in 10 minutes,  
25                   this might be a good time for me to start giving you

fellows an outlook on how I charge juries.

(Recess.)

(In open court, jury not present.)

THE COURT: I hope you all recognize that is a most unusual procedure, and I do not expect that any of you can reasonably expect me to give the charge in exactly the same words as I am going to do it today.

When I used to write speeches I used to dream up beautiful speeches and give something else. It wouldn't be that far off, but don't hold me to it haec verba.

Now that the testimony is over and the arguments are over the time has come for you and me to do our part in the administration of justice in this case. It is my province to instruct you as to the law and you must accept my instructions on that. It is your function to determine the facts and your decision on the facts is final and conclusive.

In considering the evidence and determining the facts in this case you must lay aside any questions or considerations of sympathy. It is your duty as well as mine to administer justice fairly and impartially. In so doing we must be guided solely by the law and the evidence and neither you nor I can permit our

conclusions to be affected by sympathy or suspicion.

You are to discharge your duty in an attitude of complete fairness and impartiality and, as I emphasized when you were selected as jurors, without bias or prejudice for or against the government or the defendants as parties to this controversy.

The case is important to the government since the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to each defendant who is charged with a serious crime.

Before I turn to the indictment with which we are concerned here there are a few general observations I would like to make.

I instructed you at the very start of this trial that your important function during the progress of the taking of testimony would be to listen carefully to each witness as he testified, also to observe him, and it has been evident to me, as it has been to counsel, that you have followed this instruction. And so you are prepared to undertake your final duty and in the discharge of that final duty you perform a very high duty of citizenship -- that is, you are acting to ministers justice. You members of the jury are the sole and exclusive judges of the facts. You pass upon the weight

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2 the evidence; you determine the credibility of the wit-  
3 nesses; you resolve such differences as there may be in  
4 the testimony, and you, members of the jury, draw  
5 whatever reasonable inference is warranted by the facts  
6 as you determine them.

7 It is your recollection of the facts that  
8 governs. Should that recollection differ from that  
9 of the lawyers or from mine, please disregard anything  
10 that we have said as far as the facts are concerned.  
11 If you want to have any of the testimony of any part  
12 of the case read back to you that will be done at  
13 your request.

14 Of course, you will consider only the facts  
15 which have been developed at this trial. You are not  
16 to be influenced by anything you have read about criminal  
17 cases or anything you have heard about them on the radio  
18 or seen on television. It is only what you have heard  
19 here that counts.

20 At times during the trial I have been called  
21 upon to make rulings on various matters of law. I have  
22 sustained objections and I have overrruled objections.  
23 Please do not concern yourselves with my reasons for  
24 so doing. These are purely legal matters.

25 From time to time conferences at the bench were

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1 conducted during the trial at the request of the attor-  
2 neys or at my request. These conferences were solely on  
3 questions of law or of logistics and are of no concern  
4 to you. You are not to draw any inference for or  
5 against either side because of requests for such confer-  
6 ences.  
7

8 If during the trial I have said anything or  
9 indicated anything in my questions or in my rulings  
10 which may lead you to believe I am inclined to favor one  
11 side or the other, please disregard it. Any questions  
12 of mine, any rulings, were purely for clarification.  
13

14 You have heard the summations of counsel. If  
15 you believe that any counsel stated something as to which  
16 there is no evidence, disregard that part of what he  
17 said. Statements of counsel are not evidence. They  
18 are received by advocates, not evidence. Questions  
19 are not evidence.

20 If any answer came from a witness and was  
21 stricken by me, you are not to consider that as evi-  
22 dence. The evidence is the answers of the witnesses  
23 as you recall them, the testimony that they gave, the  
24 exhibits which were received in evidence.

25 Similarly, you are to treat stipulations of  
the parties to be real evidence for both sides have agreed

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2 to the truth of those facts.

3 You have heard the testimony here. How  
4 do you determine what weight you will give it? How  
5 do you determine that you are going to believe it or  
6 not.

7 You have heard it said that you should use  
8 your plain, everyday common sense. That you should do.  
9 You saw the witnesses. How did their testimony impress  
10 you? Did they appear to be testifying honestly and  
11 frankly? In evaluating their testimony and their  
12 credibility you will apply your own common sense and  
13 experience just as you would do in determining an import-  
14 ant matter in your own lives when you decide whether or  
15 not you have been given a true picture of a certain  
16 situation.

17 You may consider the witness' demeanor, his or  
18 her lack of candor, his or her ability express himself,  
19 his or her possible bias, his or her strength of recol-  
20 lection, their accuracy of recollection.

21 If you believe the witness has been convicted  
22 of a crime or done any immoral or discreditable act, then  
23 you may take that into account in determining the  
24 credibility of the witnesses and you may give it such  
25 weight as you think it deserves.

1  
2 You may also consider whether the witness has  
3 a possible interest in the outcome of the case. This  
4 does not mean that a witness necessarily will testify  
5 falsely because he or she has an interest. It is  
6 merely a factor which you should consider.

7 The police and the narcotics agents might be  
8 said to have an interest in this case. It is a case  
9 which they have investigated and presented. You may  
10 consider that and give it what weight you feel it de-  
11 serves. The fact that a witness is an employee of the  
12 government does not mean you should give greater credit  
13 to his testimony. His testimony should be scrutinized  
14 in the same manner as that of any other witness.

15 I charge you that the government here must be  
16 considered in no different light than any other party to  
17 a lawsuit and counsel for the government must be con-  
18 sidered in no different light than counsel for the defend-  
19 ant or any other litigant. The fact that the govern-  
20 ment is a party entitles it to no greater consideration  
21 than accorded to any other party in a lawsuit.

22 The defendants who testified also have an  
23 interest in this case. That interest is apparent.  
24 You may consider that interest in determining the weight  
25 which you give to that testimony.

Certain of the witnesses who testified at this trial said in their testimony that they were accomplices in the crimes charged against the defendants on trial. The testimony of these witnesses is to be weighed with caution and care

In the prosecution of crime the government must often use witnesses who are accomplices, but the fact that these witnesses are accomplices is not in and of itself reason to reject totally their testimony. Weigh their testimony carefully and with caution, then accept or reject that which you feel is believable.

You should also consider whether the witness testimony is supported or whether it is contradicted by other credible testimony.

If you find that a witness has made a material statement with the intention of misleading you may disregard that part of the witness' testimony or you may disregard it all if you do not believe it, or you may accept the part which you believe and find to be reliable and disregard the rest.

All these things you are to consider in judging credibility, believability, and in determining where the truth lies.

In considering the evidence, it is the quality

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2 of the evidence that counts, it is not the number of  
3 witnesses, it is not the number of exhibits.

4 You may hear me sometimes refer to direct  
5 evidence or circumstantial evidence. It may be well  
6 for me to explain right now the difference between the  
7 two.

8 Direct evidence is where a witness testified  
9 as to what he saw, heard or observed, what he knows  
10 of his own knowledge, something which comes to him  
11 by virtue of his senses directly.

12 Circumstantial evidence is evidence of facts  
13 and circumstances from which one may infer connected facts  
14 which reasonably follow in the common experience of man-  
15 kind. Stated somewhat differently, circumstantial  
16 evidence is evidence which tends to prove a disputed  
17 fact by proof of other facts which have a logical  
18 tendency to lead the mind to the conclusion that the  
19 disputed fact has been established. Circumstantial  
20 evidence, if believed, is of no less value than direct  
21 evidence, for in either case y ou must be convinced beyond  
22 a reasonable doubt of the guilt of any of the defend-  
23 ants.

24 Let me take an example to show you I mean by  
25 circumstantial evidence. Let's assume that when

1       rka  
2       you entered the courthouse this morning the sun was  
3       shining brightly and it was a clear day.       Now assume  
4       you can't see outside and assume that as you are sitting  
5       in the jury box, despite the fact that it was dry when  
6       you entered the building, someone walks in with an umbrella  
7       that is dripping wet and a little later somebody walks  
8       in with a raincoat that is dripping wet.       Now, you  
9       cannot look out of the courtroom to see whether it was  
10      raining or not.       If you were asked if it was raining you  
11      can't say that you know it directly by your own observa-  
12      tion, but certainly on the combination of facts given to  
13      you, even though when you entered the building it  
14      was not raining, it would be reasonable and logical for  
15      you to conclude that it was now raining, and that is  
16      about all there is to circumstantial evidence.       You  
17      infer on the basis of reason and experience from established  
18      fact the existence of some other fact.

19               Before we consider the precise charge against  
20      each defendant on trial some preliminary matters should  
21      be noted.

22               The indictment returned by the grand jury con-  
23      tains two separate types of charges or counts.       The  
24      first count, the conspiracy count, charges that all of  
25      the defendants and others conspired to violate the federal

narcotics laws which prohibit the unlawful importation of heroin and cocaine into the United States, and also prohibit the distribution of heroin or cocaine or their possession with intent to distribute.

The other counts to which I will hereafter refer to as the substantive counts charge particular defendants with an actual violation of that part of the law which makes it unlawful for one to distribute or to possess a narctoic drug with intent to distribute.

Certain counts of the indictment have been severed and are not tried before you. Certain defendants named in the indictment have also been severed and are not tried before you.

You are not to concern yourselves with the reasons for such severances. The reasons are many and varied. Do not try to speculate on these reasons. You will have enough to do without speculation about that.

Certain persons who the government alleges were also engaged in criminal activity with the defendants were not accused in this case as defendants, but only named as co-conspirators, is also not to enter into your deliberations except in so far as it may be considered on the question of credibility. Whether persons who may be involved with others in alleged criminal conduct

1  
2 should be indicted is a matter within the sole discretion  
3 of the United States attorney and the grand jury.

4 No adverse inference may be drawn either  
5 against defendants or the government because persons  
6 are included or omitted from an indictment charged.

7 Guilt is personal. The guilt or innocence  
8 of each defendant here on trial must be determined with  
9 respect to him or her solely upon the evidence pre-  
10 sented against him or her, or the lack of evidence.

11 The charges against him or her stand or fall  
12 upon the proof or lack of proof against him or her, and  
13 not as to proof against other defendants or co-conspira-  
14 tors.

15 There are certain principles of law which  
16 apply in every criminal case and to which I made  
17 reference and emphasized at the time of your selection  
18 as jurors. I repeat them now.

19 The indictment is merely an accusation, a charge.  
20 It is not evidence or proof of a defendant's guilt.  
21 No weight whatsoever is to be given to the fact that an  
22 indictment has been returned against a defendant.  
23 They each pleaded not guilty. Thus the government  
24 has the burden of proving the charges against each of them  
25 beyond a reasonable doubt.

1 A defendant does not have to prove his  
2 innocence. On the contrary, he is presumed to be inno-  
3 cent of the accusations contained in the indictment.  
4 The presumption of innocence was in his favor at the  
5 start of the trial, continued in his favor throughout the  
6 entire trial, is in his favor even as I instruct you now,  
7 and remains in his favor during the course of your  
8 deliberations in the jury room. In other words, the  
9 law presumes that a defendant who has pleaded not guilty  
10 is to be innocent of the crime with which he is charged.  
11 Thus, the defendant, though accused, begins the trial  
12 with a clean slate, with no evidence against him.  
13 Accordingly, the government, having made the charge, must  
14 prove it beyond a reasonable doubt. This burden of  
15 proof never shifts. It remains upon the government  
16 throughout the trial.

18 A defendant in a criminal case is not required  
19 or called upon to prove his innocence. . Since the  
20 burden is upon the government to prove the accused guilty  
21 beyond a reasonable doubt of every essential element of  
22 the crime charged, the defendant has the right to  
23 rely upon the failure of the prosecution to establish  
24 such proof.

25 A defendant may also rely upon evidence brought

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out on cross examination of the government's witness.  
The law does not impose upon a defendant the duty of  
producing any witnesses.

Some defendants have taken the stand and  
also produced witnesses, other defendants have not  
In this case some defendants have not testified. There  
are many reasons why a defendant may decide not to  
testify. He may feel that because of the strain and  
the tension he may not be a calm witness. He may  
be embarrassed by his lack of education or by his  
inability to speak well in front of a group of people.

You may not and will not, I hope,  
speculate as to why any of the defendants did not  
testify. You may not draw any inference whatsoever from  
anyone's failure to take the stand.

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I remind you once more, that any defendant may rely on the presumption of innocence and need do nothing more. This presumption of innocence to which I have referred is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The question that naturally come-s up is, what is a reasonable doubt. The words almost define themselves. That there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense and your experience. It is not caprice, whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy.

If after a fair and impartial consideration of all the evidence you can candidly and honestly say you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of the defendants' guilt which amounts to a moral certainty if you have such a doubt as would cause you as prudent persons to hesitate

2 before acting in matters of importance to yourselves, then  
3 you have a reasonable doubt and in that circumstance, it is  
4 your duty to acquit.

5 On the other hand, if you have such an impartial  
6 and fair consideration of all the evidence you can candidly  
7 and honestly say that you do have an abiding conviction of  
8 the defendants' guilt, such a conviction that you would be  
9 willing to act upon in important and weighty matters in  
10 the personal affairs of your own life, then you have no  
11 reasonable doubt and under such circumstances, it is your  
12 duty to convict.

13 One final word on this subject. Proof beyond  
14 a reasonable doubt does not mean proof to a positive  
15 certainty or beyond all possible doubt. If this were the  
16 rule, few persons, however guilty they might be, would ever  
17 be convicted. It is practically impossible for a person  
18 to be absolutely and completely convinced of any contro-  
19 verted fact which by its nature is not susceptible to a  
20 mathematical certainty.

21 As a consequence, the law in a criminal case  
22 is that it is sufficient if the guilt of a defendant is  
23 established beyond a reasonable doubt, not beyond all  
24 possible doubt.

25 A word about the difference between the con-

1 ks3  
2 spiracy and the each of the substantive counts.

3 Each charges a different crime. I have already  
4 mentioned that Count 1 charges a conspiracy to violate the  
5 Federal narcotics laws, whereas the other counts, substan-  
6 tive counts, charge the particular defendants committed  
7 actual violations of those laws.

8 A conspiracy to commit a crime is an entirely  
9 separate and different event from the substantive crime  
10 which is the objective of the conspirawcy. The essence  
11 of the crime of conspiracy is an agreement or understanding  
12 to violate other laws. Thus, if a conspiracy exists even  
13 if it should fail in its purpose, it is still punishable  
14 as a crime.

15 Congress has made an conspiracy or concerted  
16 action to violate a Federal law a crime entirely separate,  
17 distinct and different from the violation of the law or  
18 laws which may be the objective of the conspiracy.

19 During the time when the conspiracy alleged in  
20 the indictment was supposed to have taken place, there  
21 were two different statutes which prohibited the activity  
22 alleged. One statute replaced the other, and I will  
23 dwell upon the elements of each when I discuss with you  
24 the substantive counts of the indictment.

25 Suffice it to say now, the Federal narcotics

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1 laws during the entire period of the conspiracy prohibited,  
2 one, the importation of controlled substances such as the  
3 drugs heroin or cocaine into the United States.  
4

5 To import heroin or cocaine into the United  
6 States, means to bring those drugs, or introduce them into  
7 the United States.

8 An exception was made to permit the importation  
9 for such drugs for scientific or medical purposes, but we  
10 are not involved with those exceptions here.

11 The second element common to these Federal  
12 narcotics laws is that it is and was illegal to receive,  
13 buy, sell, transport, conceal or distribute or possess  
14 or facilitate such activity with intent to distribute  
15 either heroin or cocaine which is imported illegally, or  
16 was to be used not within the exceptions for scientific  
17 or medical purposes as set forth in the statutes.

18 Third, that the substance was in fact a narcotic  
19 law controlled substance, here heroin or cocaine and,  
20 four, tha the defendants knew that the narcotics, or as  
21 it is called in the new statute, the controlled substances,  
22 were imported illegally into the United States.

23 The narcotics laws were enacted by Congress  
24 in an effort to combat the illegal importation, distribu-  
25 tion, possession and improper use of narcotics drugs,

1 ks5

2 which, as you know, have a substantial and detrimental  
3 effect upon the health and stature of the American  
4 people. Against this background of the applicable  
5 statutes, we turn to a consideration of the specific counts  
6 of the indictment.

7 Since the essential elements which the Govern-  
8 ment must prove in order to sustain the respected charges  
9 in the conspiracy count are different from those required  
10 of each substantive count, we shall consider these require-  
11 ments separately.

12 At this point I intend to read the first count,  
13 the conspiracy count of the indictment without the overt  
14 acts. After that is done, I will continue this way,  
15 or at least I plan to now.

16 In order to convict a defendant on trial, the  
17 Government must prove beyond a reasonable doubt the follow-  
18 ing essential elements.

19 1: The existence of the conspiracy charged in  
20 the indictment.

21 2: That the defendant knowingly associated  
22 himself with the conspiracy.

23 3: That one of the conspirators, knowingly  
24 committed at least one of the overt acts set forth in the  
25 indictment at or about the time and place alleged.

1                   ks6  
2                   Let us consider what is conspiracy.     The idea  
3                   of a conspiracy is simple.     A conspiracy is a combination,  
4                   agreement or understanding of two or more persons by con-  
5                   certed action to accomplish a criminal or unlawful purpose.  
6                   In this instance, to import into the United States or to  
7                   distribute or possess with intent to distribute narcotic  
8                   drugs.

9                   The gist of the crime is the unlawful combin-  
10                  ation or agreement to violate the law.     The success or  
11                  failure of the conspiracy is immaterial to the question of  
12                  the guilt or innocence of a conspirator.     However, in  
13                  this case, the Government contends that at least in part,  
14                  the conspiracy succeeded.     However, as I said, the  
15                  success or failure of the conspiracy is immaterial on the  
16                  question of guilt or innocence.

17                  To establish a conspiracy, the Government is not  
18                  required to show that two or more persons sat around a  
19                  table and entered into a solemn pact, orally or in writing  
20                  stating that they formed a conspiracy to violate the law  
21                  or the details or the means by which its objective is to be  
22                  achieved.

23                  Common sense will you tell you, that when  
24                  persons in fact undertake to enter into a criminal con-  
25                  spiracy, much is left to unexpressed understanding.

1 ks7  
2 But the evidence must show in order to establish  
3 that a conspiracy existed, that its members in some way or  
4 manner through any contrivance, impliedly or tacitly, came  
5 to a common understanding to violate the law or to accom-  
6 plish an unlawful plan.

7 In determining whether there has been an unlawful  
8 agreement, you may judge acts and conduct of the alleged  
9 co-conspirators which are done to carry out an apparent  
10 criminal purpose. The adage, actions speak louder than  
11 words, is applicable here. Usually the only evidence  
12 available is that of disconnected acts and conduct on the  
13 part of the alleged individual conspirators. Which acts  
14 and conduct, however, when taken together in connection  
15 with each other and considered as a whole, permit an infer-  
16 ence that a conspiracy existed as conclusively as direct  
17 proof.

18 In short, items of evidence are to be viewed  
19 not in isolation, but in conjunction with one another and  
20 upon the totality of all the evidence.

21 A conspiracy has sometimes been called a partner-  
22 ship in criminal purposes and as to the partnership, each  
23 member becomes the agent of the other.

24 To become a member of a conspiracy, and indeed  
25 a defendant may not know each and every member, nor of the

1 ks8

2 participation of other members, nor, all the details of the  
3 conspiracy. For example, there is no proof that certain  
4 defendants knew or even met other defendants or other  
5 alleged co-conspirators. Each member of the conspiracy  
6 may perform separate and distinct acts at different times  
7 and at different places. Some conspirators may play  
8 special roles while others play minor parts.

9 Thus, the guilt of a conspirator is not governed  
10 by the extent, duration, or whether he played a greater  
11 or lesser role in the conspiracy.

12 Even if one joined a conspiracy after it was  
13 formed and engaged in it to a degree limited than that of  
14 most other conspirators, he equally culpable as long as  
15 he was a con-conspirator.

16 In a word, it is not required that a person be  
17 a member of the conspiracy from its very start. He may  
18 join it at any point during its progress and be held  
19 responsible for all that has been done before he joined  
20 and that all that may be done thereafter during its  
21 existence and while he remains a member.

22 A conspiracy which once formed is presumed to  
23 continue until its objectives are accomplished, or there  
24 is an affirmative act of termination by its members, or  
25 otherwise terminated as, for example, like police inter-

1 ks9

2 ceptions

3 So, too, once a person is found to be a member  
4 of the conspiracy, he is found to continue in its membership  
5 therein until its termination or unless there is proof  
6 offered of his withdrawal or disassociation.

7 You must first determine whether or not the  
8 proof establishes the existence of the conspiracy as  
9 charged in the indictment.

10 In deciding this first element, you must consider  
11 all the evidence which has been admitted with respect to  
12 the conduct, acts and declarations of each alleged co-  
13 conspirator, and such inferences as may be reasonably  
14 drawn therefrom.

15 It is sufficient to establish the existence of  
16 the conspiracy if, from the proof of all the relevant facts  
17 and circumstances, you find beyond a reasonable doubt that  
18 the minds of at least two alleged co-conspirators met in  
19 an understanding way to accomplish by the means alleged  
20 one or more of the objectives of the conspiracy as charged  
21 in the indictment.

22 If you do conclude that the charged conspiracy  
23 did exist, you next determine whether each defendant was a  
24 member.

25 As I said, guilt is personal and you must con-

1 ksl0

2 sider each defendant separately. His participation in  
3 the conspiracy, if you find one did exist, must be estab-  
4 lished by the independent evidence of each defendant's  
5 own acts, statements and conduct as well as those of the  
6 alleged co-conspirators and the reasonable inferences to  
7 be drawn therefrom.

8 To find that a particular was a member, you must  
9 be satisfied beyond a reasonable doubt that, aware of its  
10 purposes, a particular defendant was a willing participant  
11 with the intent to advance its purposes.

12 If you do so find, then however limited to his  
13 role in the furthering the objectives of the conspiracy,  
14 he is responsible for all that was done in furtherance  
15 thereof either before or during its continuance.

16 Once you are satisfied beyond a reasonable  
17 doubt that a conspiracy existed and that a particular  
18 defendant was a member, then the acts and declarations of  
19 any other son whom you also find was a member of the con-  
20 spiracy, made by such co-conspirators during its existence  
21 and in furtherance of its objectives, are considered the  
22 acts and declarations of all other members of the con-  
23 spiracy even though they were not present.

24 I told You about taking evidence subject to  
25 connection and I told you about explaining it in detail

ksll

later. This is what I meant:

Let me repeat the explanation. Once you are satisfied beyond a reasonable doubt that a conspiracy existed and that a particular defendant was a member, then the acts and declarations of any other person whom you also find was a member of the conspiracy made by such con-conspirators during the existence of the conspiracy and in furtherance of its objectives, are considered the acts and declarations of all of the members of the conspiracy even though they were not present.

For example, assume that you find that a conspiracy as charged existed, of which a particular defendant and others were members. Then, any act, statement or conduct of any one of them in furtherance of the conspiracy and during its existence would be binding upon that particular defendant if you find that he too was a member of the conspiracy. This would be true even though if he was not present on that occasion.

Summing it up in a simple way, if there was in fact a partnership in crime, each partner acts and speaks for the others in the furtherance of the partnership business, even though the others were not present.

The existence of a conspiracy and once membership therein may be established by direct evidence or

1 ksl2

2 circumstantial evidence, these are rarely susceptible  
3 of proof by direct evidence. Usually they are estab-  
4 lished as a matter of reasonable inference based upon  
5 circumstantial evidence.

6 Either direct or circumstantial evidence will  
7 suffice if you are convinced by such evidence beyond a  
8 reasonable doubt of the guilt of each defendant. In this  
9 case the Government relies upon both direct and circum-  
10 stantial evidence. It contends that through the testi-  
11 mony of accomplices and co-conspirators, it has in addition  
12 to the circumstantial evidence, offered direct proof of  
13 the conspiracy.

14 If the reasonable inferences to be drawn from  
15 any evidence lead to two conclusions, one favoring guilt  
16 and one favoring innocence, it is your duty to favor that  
17 which favors innocence. The reason for this is, that if  
18 each inference is reasonable, there would be a reasonable  
19 doubt with respect to that evidence.

20 Whether the defendant knowingly and intention-  
21 ally participated in the claimed conspiracy, presents an  
22 issue of fact. Clearly, this concerns what is in one's  
23 mind. Science has not yet devised an instrument whereby  
24 we could go back to the time of the occurrence of events  
25 and determine what then was a person's intent or knowledge.

1 ksl3

2 These may be determined from one's acts, conduct and  
3 surrounding circumstances and such inferences which may  
4 reasonably be drawn therefrom.

5 If you find the circumstances of secrecy in  
6 treating the use of fictitious names with attempts to con-  
7 ceal the true nature of a transaction, these may be con-  
8 sidered by you as circumstantial evidence of criminal  
9 intent.

10 In this case, the Government contends that the  
11 conspirators attempted to conceal their narcotics activi-  
12 ties by using code words, or otherwise guarding and  
13 camouflaging their conversation. For example, "goods",  
14 supposed meant narcotics. "A dozen shirts", supposedly  
15 meant a kilogram of heroin.

16 "A package" supposedly meant a kilogram of  
17 heroin.

18 If you find circumstances of intrigue or devious-  
19 ness or attempts by a defendant to conceal the true nature  
20 of a transaction, this may be considered by you as circum-  
21 stantial evidence of knowledge of the unlawful purpose of  
22 the transaction.

23 The evidence offered on this subject, however,  
24 may not in and of itself serve as a substitute for other  
25 proof. It may be considered by you along with other

1 ksl4

2 evidence in the case in reaching your judgment.

3 A further word of caution. Mere association  
4 of the defendant with an alleged conspirator or conspirators,  
5 does not establish his participation in the conspiracy if  
6 you find one to exist, nor, is knowledge without participa-  
7 tion sufficient.

8 Thus, even if you find that a particular defend-  
9 ant associated with other defendants and co-conspirators  
10 and further find the latter were participants in a con-  
11 spiracy to violate the narcotics law, and that this partic-  
12 ular defendant knew the others were engaged in such  
13 activities, this by itself would not be sufficient to find  
14 the particular defendant guilty on the conspiracy charge.

15 Let me give you an example:

16 Certain photographs were introduced into evidence  
17 by the Government which purportedly show certain defendants  
18 in the company of other defendants or co-conspirators.  
19 These photographs standing alone do not prove a conspiracy.  
20 For example, the photographs of Hattie Ware. If you  
21 believe they are accurate, that shows merely she was in  
22 the company of other alleged co-conspirators, and this in  
23 and of itself does not prove the conspiracy charged.  
24 There may be some corroboration that defendants knew one  
25 another, but that in and of itself is not sufficient.

1 ksl5

2           What is necessary, as I have already said, is  
3 that a defendant participate in a conspiracy with knowledge  
4 of at least some of its purposes and with intent to aid the  
5 accomplishment of its unlawful ends.

6           If you find the Government has sustained this  
7 element as to each defendant's participation, we reach the  
8 next element.

9           I have already mentioned that the third essential  
10 element of the crime of conspiracy is that an overt act in-  
11 tended to effect the object of the conspiracy must be  
12 committed by at least one of the co-conspirators after the  
13 unlawful agreement has been made.

14           An overt act is any step, action or conduct  
15 which is taken to achieve, accomplish, or further the  
16 object of the conspiracy.   The purpose of requiring proof  
17 of an overt act is that while parties may conspire and  
18 agree to violate the law, yet they may change their minds  
19 and do nothing to carry it into effect, in which event it  
20 does not constitute an offense.

21           The overt act need be neither a criminal act  
22 nor the very crime which is the object of the conspiracy.

23           At this point I intend to go through the overt  
24 acts.   I have given you this preview of the charge,  
25 the first part.   The first part of it, needless to say,

1 ksl6

2 a minor part. But, so that you will notice, basically,  
3 what kind of a charge I intend to give, so you can draft  
4 up your requests of charge with that view.

5 Mr. Warner, I am sure you have an exception to  
6 the charge?

7 MR. WARNER: We are just about to break for  
8 lunch, your Honor, but I would ask if your Honor in  
9 marshaling the facts, your Honor intends to marshal by  
10 defendant, by count or by witness or by some other com-  
11 bination?

12 THE COURT: I haven't decided. I will be  
13 honest, I have not decided. If it is by defendant, it  
14 is going to be very difficult for me, I will be very  
15 honest.

16 Gentlemen, I realize that I ket you here after  
17 our normal breaking time. How about 2.15.

18 (Luncheon recess.)

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A F T E R N O O N     S E S S I O N

(Jury not present.)

2.25 P.M.

MR. ROSENBAUM: May we have a conference, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. ROSENBAUM: Your Honor, it has come to my understanding there are some surveillance reports that are probably in existence of Vincent D'Amico running from the period of somewhere July of '73 through October of '73, by a federal agency. If they are available or in existence, and I have reason to believe they are in existence, I respectfully request the Court to produce same to me for my inspection as soon as possible.

MR. PHILLIPS: We would oppose that, your Honor.

THE COURT: I would assume if there are surveillance reports, you are going to have your surveillance witnesses; is that correct? I don't know.

MR. PHILLIPS: If we have these witnesses get on, they would be reports of 3500 --

MR. ROSENBAUM: The federal agents told my client he was under surveillance the last four months prior to the arrest, which took place October 4, '73.

1 hp2

2 I don't know the relevancy, but I would like the opportunity  
3 to inspect these reports and make a determination at that  
4 point if same would be applicable to my client's defense.

5 THE COURT: Let me think about it.

6 MR. PHILLIPS: Your Honor, we have not turned over  
7 any surveillance reports to other counsel. There is no  
8 provision of law that provides for it. We have turned over  
9 photographs where the defendant appeared or surveillance  
10 we intended to use. We do not have any such photographs  
11 of Mr. D'Amico.

12 MR. ROSENBAUM: There was a specific statement  
13 made to my client by --

14 THE COURT: I understand that.

2

15 (In open court.)

16 THE COURT: Gentlemen, you know my method of  
17 operation now. Who is going to cross-examine this witness?

18 MR. ROSENBERG: I am.

19 MR. LOPEZ: I have a list for you, your Honor.  
20 Mr. Rosenberg, Mr. Leighton, and then Mr. Siegal.

21 THE COURT: That's it?

22 MR. LOPEZ: That's it, your Honor.

23 THE COURT: All right, now, gentlemen, I have gone  
24 through the 3500 material. With the exception of the change  
25 which I suggested before, I believe the parts that have been

1 hp3

2 deleted from the various 3500 reports, really have no  
3 bearing whatsoever in this case. It seems like something  
4 completely different. I do have a little difficulty with  
5 one report, Government's Exhibit 3575-A. I guess the  
6 problem here arises because I work on Saturdays and holidays.  
7 Unfortunately, what we have, on 3575-A, I have exactly the  
8 same thing that you have, and I want the original. Now,  
9 the original is in a government office, which is closed for  
10 the holiday, and I am not going to make any ruling on  
11 3575 until such time as I get it. I think you should have  
12 enough to cross-examine with, with the material you have  
13 presently.

14 MR. ROSENBERG: I need more.

15 MR. POLLAK: My client asked to be excused for  
16 one moment, your Honor.

17 THE COURT: Sure. Anyway, what we will do,  
18 tomorrow I expect the government to produce the original  
19 or an original. I will go through it and if there is  
20 absolutely anything in it that they have not turned over  
21 to you, I will turn it over and you can start the cross-  
22 examination all over again.

23 MR. ROSENBERG: Thank you.

24 MR. LEIGHTON: Your Honor, one question.

25 The 3574, the second page of the copy that I have appears

1 hp4

2 to represent two pages, two separate pages put together.

3 THE COURT: Let me take a look. I don't know  
4 what the answer to that is. Mr. Fortuin?

5 MR. FORTUIN: This is personal background  
6 information that has been masked over. It's only one sheet.

7 THE COURT: Where is the original? I haven't got  
8 it.

9 MR. FORTUIN: I will give it to you, your Honor.

10 THE COURT: I'm glad you brought that to my  
11 attention, Mr. Leighton. The information which is con-  
12 tained in the part which has been Xed out, indicates he  
13 works in a grocery store, is a citizen of the United States,  
14 and has a prior record such as he testified to, and his  
15 address, which I am not going to give you. Other than that  
16 you --

17 MR. SIEGAL: Your Honor, if I can inquire, on the  
18 copy I have, it says, "NC almost two years ago." Would  
19 you advise me what is directly above that?

20 THE COURT: It is not NC. It is DC. It  
21 indicates that he moved from Washington, D.C., and what it  
22 says exactly is: "Moved from Wash. D.C. almost two years  
23 go." All right, with the exception then of 3575-A, all  
24 of the others will be marked as Government's Exhibit Sealed  
25 3500.

1 hpp5

2 MR. LEIGHTON: So that I am clear, does the Court  
3 have 3575-A, that is, unredacted, a copy of the original?

4 THE COURT: That's my problem. I want the  
5 original.

6 MR. LEIGHTON: You have the same redacted copy  
7 we have?

8 THE COURT: I assume it's the same as yours.  
9 I want the original. I don't care how they get it.  
10 If need be, they can send it by the Flash Gordon form and  
11 project some images from Washington to New York.

12 MR. FORTUIN: Actually, you have everything  
13 undeleted except for one page.

14 THE COURT: Yes, one page, but one page is one  
15 page. All right, are you ready? Bring back the jury.  
16 Mr. Rosenberg, do you have any idea of how long?

17 MR. ROSENBERG: I'm sorry, your Honor, I don't.

18 THE COURT: I figured I was going to be 15  
19 minutes in bringing this to you, and I went longer than  
20 that. Mr. Dowd, you are one up on me. Mr. Leighton, do  
21 you have any idea?

22 MR. LEIGHTON: In the area of 10 to 15 minutes.

23 MR. COURT: Mr. Siegal?

24 MR. SIEGAL: Somewhere in the area of 10 to 15  
25 minutes.

1 hpp6

3 2 T H O M A S F R A N K D A W S O N, resumed.

3 THE COURT: All right, sit down, Mr. Dawson.  
4 You are still under oath.

5 CROSS EXAMINATION

6 BY MR. ROSENBERG:

7 Q Mr. Dawson, all of your convictions and arrests  
8 are always out of the Washington, D.C. area; is that correct?

9 A Yes, sir.

10 Q Now, I am unfamiliar with the Washington Penal  
11 Law. I wonder if you'll help me out a little bit here.  
12 In 1949, you told us what this was. You were arrested  
13 in 1949; is that it?

14 MR. FORTUIN: Objection, your Honor.

15 THE COURT: I don't know what it is. I don't  
16 have a question. What are you pointing to, Mr. Rosenberg?

17 MR. ROSENBERG: His yellow sheet.

18 THE COURT: Let me have it, will you?

19 MR. FORTUIN: May we talk at the side bar?

20 THE COURT: Yes.

21 (At the side bar.)

22 MR. FORTUIN: Those are arrests and we believe  
23 he is not entitled to that.

24 MR. ROSENBERG: Sometimes on a yellow sheet,  
25 it comes up arrest and they don't list convictions. It

1 hpp7

Dawson-cross

2 remains open. Sometimes there is a conviction, which is  
3 not reflected on the yellow sheet. I respectfully submit  
4 I can go into that. If, in the event it turns out not  
5 to be an arrest, and conviction, the Court can rule on that.  
6 I can't make heads or tails out of some of these things.  
7 I don't know what they are referring to here.

8 THE COURT: Where are you?

9 MR. ROSENBERG: We'll start with the first one,  
10 larceny. I don't know if he was convicted for that or not.  
11 I would submit I would like to determine whether or not he  
12 was convicted or not.

13 THE COURT: The easiest way to do it, I suggest,  
14 he mentioned three convictions this morning. Ask him if he  
15 was convicted of anything else.

16 MR. ROSENBERG: I am not bound by that, Judge.  
17 I want to develop that.

18 MR. PHILLIPS: He is not entitled to ask about  
19 arrests.

20 THE COURT: Arrests, forget to ask about that.  
21 Do you know if he has been convicted of anything else?

22 MR. PHILLIPS: He has not. These are the three  
23 convictions, the three he mentioned this morning.

24 MR. ROSENBERG: Your Honor, I'm not bound by the  
25 government's representation.

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2                   MR. PHILLIPS: Then we will have a hearing outside  
3 the jury, but --

4                   THE COURT: I agree. You can't go into just  
5 arrests.

6                   MR. ROSENBERG: I'm saying, your Honor, there  
7 are times on a yellow sheet and I know this personally,  
8 when there is just put down arrest. Where it says dis-  
9 position, sometimes it's bare when, in fact, it was a  
10 conviction as this is what I want to go into. We're  
11 talking about a larceny, the first arrest. If he wasn't  
12 convicted, fine, let him tell it to me. How do I know he  
13 wasn't convicted of it, Judge? I'm going to take his word  
14 for it?

15                   THE COURT: That is what you will wind up doing  
16 anyway. By approaching it the way you are suggesting,  
17 you are getting into arrests. Ask him about convictions,  
18 but that's as far as you can go. I am suggesting to ask him  
19 "Have you been convicted of anything else?"

20                   MR. ROSENBERG: Judge, over here, 1950 it says  
21 T22, Section 1801, and so forth, and disposition 8500.

22                   THE COURT: That's bail, I'm sure.

23                   MR. ROSENBERG: It says "Disposition."

24                   THE COURT: It's bail, 8500.

25                   MR. ROSENBERG: Can anybody tell me what this  
crime is alleged to have been and whether he was convicted

1 hp ) Dawson-cross

2 of it?

3 MR. FORTUIN: As far as I know, he was only  
4 convicted of the ones we brought out.

5 MR. LEIGHTON: Where did you get your information?

6 MR. ROSENBERG: I'm not bound by that, Judge.  
7 They're taking the representation of this witness.

8 MR. PHILLIPS: He is bound by that in front of  
9 the jury.

10 THE COURT: All you can ask him now whether he  
11 has been convicted of a crime.

12 MR. SIEGAL: Your Honor, I would say it's always  
13 proper for counsel to ask on cross-examination, "In 1949  
14 were you convicted of the charge of larceny of an auto-  
15 mobile," and if he says no, all right, but you can ask him  
16 a specific date.

17 THE COURT: That's like when did you stop beating  
18 your wife?

19 MR. ROSENBERG: Not necessarily, your Honor.  
20 Here there is a basis for it, there is an arrest with  
21 respect to that, and just because of that it doesn't mean  
22 he was convicted of larceny. It could have been a juvenile  
23 situation underlying larceny. The jury has a right to  
24 know about that.

25 THE COURT: I disagree.

1 hpp10

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2 MR. LEIGHTON: Judge, may I suggest, since the  
3 government has stated the way they verify the sheet is  
4 by asking this witness himself, possibly we have the voir  
5 dire and check it out. If the government says this is  
6 an up-to-date sheet from the FBI, that has everything in  
7 here, then I would go along with that representation.

8 THE COURT: Can you cross-examine without getting  
9 into this right now? If you want a hearing about this, we  
10 will have it without the jury present. Starting right  
11 away and excusing them becomes difficult, it may reflect a  
12 delay.

13 MR. ROSENBERG: All right, your Honor, you are  
14 leaving open the possibility of going into that later with-  
15 out the presence of the jury?

16 THE COURT: Yes, and I wish you would go ahead  
17 right now.

18 MR. SIEGAL: Your Honor, if I can clarify this,  
19 is it the Court's position the Court will not allow counsel  
20 a specific question of the witness in 1949 were you con-  
21 victed of larceny for a motor vehicle?

22 THE COURT: That's right.  
23  
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25

2

Q What was the first conviction you had in your life?

3

4

A I was arrested for vagrancy one time, but I went back to court and they dismissed it, they found out I worked and everything. Then I was arrested in 1950 for housebreaking. In 1954 --

5

6

7

8

Q What happened to that one in 1950, were you convicted?

9

10

A I pleaded guilty.

11

Q How many years did you get?

12

A Three years.

13

Q Then you came out in 1953?

14

A '52.

15

Q You just told us you were arrested in 1950 and you got three years?

16

17

A Right.

18

Q Wouldn't that be '53?

19

A Nineteen months for the three years.

20

Q Were you selling narcotics in 1950?

21

A No, sir.

22

Q When you came out of jail you say you got convicted again?

23

24

A Yes.

25

Q What was that for?

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A Housebreaking.

3

Q When was that?

4

A 1954.

5

Q How much time did you get on that?

6

MR. FORTUIN: Objection.

7

THE COURT: I will permit it.

8

Q How much time did you get on that?

9

A Six years.

10

Q When did you come home on that case?

11

A '57 or '58, I can't remember.

12

Q Did you have another conviction after that?

13

A That is right.

14

Q When was that?

15

A Housebreaking.

16

Q When?

17

A '59, November, 1959.

18

Q Were you selling narcotics during the short

19

period of time you were out?

20

A No.

21

Q Were you working during that period of time?

22

A Yes.

23

Q You got convicted again in 1959?

24

A That is right.

25

Q Did you get any time on that case?

A Yes.

Q How much time?

MR. FORTUIN: Objection.

THE COURT: I will permit it.

A I was given 12 years.

Q When did you come home on that?

A 1967.

Q Were you convicted of anything from 1967 to the present date?

A Nothing other than disorderly conduct.

Q Were you convicted of anything besides your burglaries?

A No, sir.

Q You were not?

A No, sir.

Q Since 1967 what kind of work have you been doing?

A I work for Heslip Contracting Company and subcontract for security operations here in New York.

Q When did you start that work?

A I was working for Heslip Contracting Company in 1959.

Q How long did you work there?

A I worked there until I was arrested in

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1959 and I went back to work then when I came home.

Q When was that?

A 1967.

Q From 1967 what kind of work have you been doing?

A Yes.

Q I worked for Heslip Contracting and security operations until 1971.

Q From 1971 on what kind of work have you been doing?

A 1971, I wasn't working a short period of '71.

Q Until when?

A Until I went to Memphis in March, April of 1972.

Q What kind of work did you do in Memphis?

A We have a small country grocery store.

Q How long did you work there?

A How long I have the store.

Q How long did you work in that store?

A We have it almost two years.

Q Were you working there from 1972 to the present date?

A Yes, sir.

Q When did you enter the narcotics business?

A February, 1971.

Q Who was it that introduced you to the narcotic

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business?

A Well, Paul Gregario approached me.

Q You were in Washington during this time?

A Yes, sir.

Q Paul Gregario, did he just come over to you  
cold some place in Washington to discuss narcotics with  
you?

A Paul and Warren were arguing in Warren's store.

Q That is when you got involved in narcotics,  
is that correct, in 1971?

A Yes.

Q How much money have you made from the nar-  
cotic business?

A I don't have any idea.

Q You told us you had a Lincoln Continental?

A I have always had cars.

Q And you supported a large family?

A Yes.

Q Vacations and every place else, is that  
correct?

A No vacations.

Q How much money do you estimate in 1971 you  
made from the narcotic business?

A I don't know. It provided me with a nice

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living but I didn't make that much money because the money was always short.

Q You would buy your narcotics and you would cut it, right?

A That is right.

Q When you cut it, who would you distribute it to?

A I had two or three people in Washington.

Q What are their names?

A One fellow, a friend of mine was named Moochie and there was a friend named Donald.

Q That is who you would distribute it to?

A Yes.

Q Nobody else?

A It could be somebody that I recommended to distribute narcotics to.

Q When you get a ki of heroin how would you cut it?

A It's according to the strendth.

Q I don't understand. Would you take some mannite and put an equal amount of mannite as you had heroin and you would end up with twice as much heroin?

A Depending how much it could be cut.

Q Sometimes with one ki of heroin you would be

1           able to end up with three kilograms of heroin?

2           A       I don't think we ever had anything like that  
3           that we would do that.

4           Q       You would at least cut it in half so you would  
5           end up with two kilos?

6           A       Sometimes.

7           Q       How much would you sell a kilo of heroin for?

8           A       I never sold a kilo.

9           Q       You sold it by packages?

10          A       It was very little narcotics I would sell.  
11          They would sell it for me.

12          Q       The person that you sold it to, how would you  
13          give it to him, by packages?

14          A       Yes.

15          Q       These are what we refer to as nickel packages,  
16          \$5 bags?

17          A       No.

18          Q       Eighths, quarters?

19          A       Yes, something like that.

20          Q       Is that what you generally dealt in, quarters?

21          A       Yes.

22          Q       That is the general way in which you dealt?

23          A       Yes.

24          Q       So you cut it in half at least and if you  
25

1 paid 30,000 you ended up with two packages that  
2 you sold for 60,000?  
3

4 A No, we didn't work it like that. I guess  
5 that could be what it amounted up to but we didn't work  
6 it like that.

7 Q When you sold it in quarters, in eighths or  
8 halves, that is what it evened up to?

9 A If it was good enough to cut it like that.

10 Q Most of the times you were able to cut it at  
11 least once, so you ended up with two packages?

12 A Sometimes you weren't able to do anything, it  
13 had got so bad.

14 Q Sometimes you were able to do better, is  
15 that right?

16 A Yes.

17 Q So if I understand you correctly, if you got  
18 a package for 30 and you sold it for quarters, halves or  
19 eighths, you ended up making 30 on it, is that what you  
20 are telling us?

21 A I wouldn't end up making 30, no.

22 Q What would you end up making?

23 A The way it was set up you could sell it all,  
24 one person could sell it all and he would have to turn in  
25 a thousand dollars more than what the package was paid

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Dawson-cross

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Q How much would you make on a package?

A I couldn't possibly tell.

Q Let me see if I understand.

You have a kilo that you cut and you make two kilos, on a good kilo, right?

A Right.

Q Now you have two kilos of heroin that you are selling in eighths and quarters?

A Yes.

Q How much would you sell an eighth for?

A We were charging a thousand dollars an ounce, and it's cut down to less when you sell it in a larger quantity.

Q Do you know how much you would charge for an eighth?

A About \$3500.

Q So that if you ended up with two packages you would end up with -- you would sell each package for about \$28,000, am I correct, approximately, according to your figures?

A No, we sold it for 20,000, if it was a kilo.

Q You told us before that you sold an eighth and you sold in quarters, is that correct?

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A Yes.

Q When you got a kilo you would cut that and you would distribute it by eighths and quarters, is that your testimony?

A Yes.

Q When you distributed it by eighths and quarters you would be selling it at the going value of \$3500 an eighth, am I correct, this is what you are telling us?

A Yes.

Q If you ended up with two kilos from one kilo you would be selling one kilo for approximately 28,000 and a second kilo for approximately 28,000, am I correct?

A We didn't do it like that. Since we cut it we sold it for 20,000. If you sold a kilo that is what it would go for.

Q But you didn't sell the kilo, you sold it by eighths and when you sold it eighths you got 3500?

A Yes.

Q So if you bought a half a kilo and you cut it you would be selling the equivalent of a full kilo at approximately 3500 an eighth, am I correct?

A Yes.

Q Are we communicating now?

1 rka Dawson-cross 2714

2 A Yes.

3 Q So on that basis you would be making approxi-

4 mately \$23,000 for every kilo of heroin you sold?

5 A If I sold it.

6 Q From 1971 how many kilos of heroin had you

7 sold?

8 A I don't have any idea.

9 Q You sold more than one, didn't you?

10 A Yes. You mean as far as my selling it

11 myself?

12 Q Yes, you.

13 A Yes, I had to, yes. Yes, I had to.

14 Q You sold more than two kilos, didn't you?

15 A I don't know. I probably did.

16 Q You don't know whether you sold more than two

17 kilos?

18 A I wouldn't be able to say. I would say

19 that I did, yes.

20 Q Would you say that you sold more than three

21 kilos?

22 A No.

23 Q So the extent of your narcotic participation

24 was two kilos?

25 A Not that I was responsible for.

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Q I am talking about you.

A I can't tell how much I sold.

Q I am talking about you. Did you sell more than two kilos of heroin since you have been in the narcotic businesses from 1971?

A I might have.

MR. FORTUIN: Objection. Asked and answered.

Q What was that?

A I might have.

THE COURT: I will permit it.

Q You might have? You might have?

A Yes. A Yes.

Q Might you have also sold more than three kilos of heroin?

A I would doubt that.

Q So somewhere between two and three kilos is the extent of your narcotic participation?

A I would think so.

MR. FORTUIN: Objection to "participation." It is ambiguous.

MR. ROSENBERG: He answered it.

THE COURT: I will permit it.

Q So you are not really a big-time narcotic

1 rka

Dawson-cross

2716

2 seller, is that right? You have only been involved in  
3 two kilos, am I correct?

4 MR. FORTUIN: Objection.

5 THE COURT: I will permit it.

6 Q Am I correct, sir?

7 A What is that? Would you repeat it?

8 Q You are not a big narcotic seller, you have only  
9 been involved in two narcotic sales, two kilos of narcotics?

10 MR. FORTUIN: Objection. That is not  
11 what he said.

12 MR. ROSENBERG: Your Honor --

13 THE COURT: Don't start arguing. I will  
14 permit it.

15 Q Is that what you told us, two kilos of heroin?

16 A Or more.

17 Q Or more?

18 A Yes, I said that.

19 Q Let's find out, sir.

20 A I can't be sure.

21 Q Is it more than two kilos?

22 A I wouldn't be able to be sure.

23 Q It's not more than three kilos, is that correct?

24 A I don't think it would be.

25 Q Very good. On how many occasions did you

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meet with Harry Pannirello in 1972?

A I would say six, eight times.

Q Six or eight times, and every time you met him you dealt, correct?

A Not every time; mostly every time.

Q In 1972 you met him between six and eight times?

A I met him twice in '72. I thought you said '71.

Q All right. We will start with '71. '71 you met Harry Pannirello between six and eight times?

A Between six and eight times from the time I met him. From the first time I was introduced to him.

Q Let's go to '71. How many times did you meet Harry Pannirello, six times?

A So acquire narcotics, six times.

Q How much did you buy from Harry Pannirello on each occasion?

A Anywhere from a half to three-quarters a kilo.

Q A half to three-quarters of a ki?

A Up to a kilo.

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Dawson-cross

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Q Up to a kilo?

A Yes.

Q And you met him six times?

A Right.

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Dawson-cross

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Q In 1971. How about 1972?

3

A To acquire narcotics, twice in 1972.

4

Q What did you buy then?

5

A A kilo the first time and a large quantity the

6

last time.

7

Q A kilo and even more the las time?

8

A Yes.

9

Q How much more than a kilo?

10

A I am not sure. It was a large quantity.

11

It was a large quantity. It was more than two kilos.

12

Q Three kilos?

13

A I can't remember.

14

Q At least more than two kilos?

15

A It was more than normal.

16

Q You just told us the extent of your narcotic

17

participation couldn't possibly have been more than three

18

kilos of heroin, is that correct?

19

A I was responsible for all of it. I said that

20

sold. I was responsible for the money, for all of it.

21

Q How much narcotics did you buy, you?

22

A Technically, I bought it all.

23

Q How much?

24

A I don't know. You have to add it up. It woul

25

run from a half a kilo to three-quarters.

1 ks2 Dawson-cross

2 Q Then from the time you have been involved in the  
3 narcotics business, how many kilos of heroin did you buy?

4 MR. FORTUIN: Objection. Let him answer the  
5 question.

6 MR. ROSENBERG: I am trying to get an answer.

7 MR. FORTUIN: He is in the middle of an answer.

8 THE COURT: Answer the question.

9 Q From the time you have been in the narcotics  
10 business, how many kilos of heroin did you buy?

11 A I would say I was responsible for something in  
12 the neighborhood of eight or ten kilos.

13 Q And that is the extent of your narcotic  
14 participation, you bought ten kilos, is that correct,  
15 and those ten kilos were cut approximately once, is that  
16 right?

17 A Yes, if they could be.

18 Q So 20 kilos of narcotics was distributed by you?

19 A I was responsible for it.

20 Q And of those 20 narcotic kilos that were dis-  
21 tributed, how much was your profit from each narcotic  
22 kilo?

23 A I don't have any idea. If somebody sold the  
24 narcotics, they had to turn in a thousand dollars more than  
25 the narcotics cost. That is the only answer I could give.

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Dawson-cross

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Q Turn it in to you?

3

A I was responsible for the money.

4

Q They would turn the money in to you?

5

A Yes.

6

Q You held the money?

7

A Most of the times.

8

Q You purchased the narcotics?

9

A Yes.

10

Q So there were other people working for you?

11

A Working with me.

12

Q But you were the banker, so to speak, correct?

13

A It made me responsible for the money.

14

Q How much money do you approximate that you made

15

from the narcotics business?

16

MR. FORTUIN: Objection. It has been asked

17

and answered several times.

18

THE COURT: I will permit it.

19

Q Can you tell us now?

20

A I don't have any idea.

21

Q Do you have any money?

22

A Sir?

23

Q Do you have any money?

24

A Yes, I have some money.

25

Q How much money do you have?

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Dawson-cross

MR. FORTUIN: Objection.

THE COURT: I will sustain that.

Q Do you have any money that you earned from the narcotic business?

A Not that I know of.

Q In other words, the only money that you have now is the money that you earned legitimately, is that right?

A That is right.

Q All the money you earned from the narcotics business has dissipated, is that right?

A That is right.

Q How much money would you say you dissipated in 1971?

A I don't have any idea.

Q More than \$30,000?

A You mean myself?

Q You, that you spent on your family, on your cars, maybe your girl, whatever, a bar? That you spent.

A No, I don't think it would be that much.

Q It wouldn't be that much?

A No.

Q How about 1972?

A No.

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Dawson-cross

Q How much do you estimate that you spent from the narcotics business in 1971?

A I wouldn't have any idea how to estimate it. If I was sitting up with a pencil and trying to figure it out, maybe I could come out with some type of figure.

I could say that I lived good.

Q When you say that you lived good, what does that constitute, \$500 a week \$700 a week?

A I took whatever I had to have to live.

Q What does living good to you mean, a hundred a day, \$200 a day?

A I guess some days it took that much to live.

Q On a seven-day a week basis, you were spending \$1400 a week on some weeks?

A I doubt that.

Q How much rent were you paying?

A I must have been paying \$130-something or \$140 a month.

Q When was this?

A In 1971.

Q 1972.

A It would have been the same. I was living in an apartment.

Q You don't own a home?

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Dawson-cross

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A I owned a home, yes.

Q When was this?

A In 1970.

Q 1970 you owned a home?

A Yes.

Q Where?

A In Landover, Maryland.

Q How much did it cost you?

A 21.5.

Q How much cash did you put down?

A \$1300, 1400.

Q Who was the first person you spoke to in connection with this case, Agent Logan?

A That is right.

Q Where did you meet Agent Logan?

A In Washington.

Q He came to your apartment?

A That is right.

Q What was the reason that Agent Logan came to you?

MR. FORTUIN: Objection.

MR. ROSENBERG: I will withdraw it.

Q Did Agent Logan tell you that you were involved in a narcotic sale and that is why he is coming to you?

A No, sir.

1 ks7

Dawson-cross

2 Q He didn't just pick you out of thin air, did he?

3 A No. He knew of me in Washington.

2 4 Q In other words, he learned that you were  
5 dealing in narcotics, is that right?

6 A He is on the Narcotic Squad. I guess he did.

7 Q When he came to see you, did he tell you that  
8 he learned you were in the narcotic business and he wanted  
9 to talk to you?

10 A He didn't come to me for that reason.

11 Q He came to you for a different reason?

12 A Yes, sir.

13 Q Other than that?

14 A I guess that was his purpose but he didn't speak  
15 of it then.

16 Q He did speak of it some time?

17 A Yes.

18 Q Did he tell you that he knew you were involved  
19 in narcotics?

20 A Yes, he said something to that effect.

21 Q Then he asked you "If you cooperate with me, I  
22 will see what I can do for you"?

23 A No, he did not.

24 Q But he told you he knew you were involved in  
25 narcotics, is that right?

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A Yes, in so many words he did.

Q Did there come a time when you discussed the instant case with Agent Logan, is that right?

A Yes.

Q When was that?

A I think it was November, 1971.

Q Is that the first time you discussed the case?

A I don't think it was.

Q When was the first time you discussed the case?

A I can't say exactly. It was some time shortly after he came to my house.

Q When did he come to your house?

A I would estimate early fall, late summer.

Q What year?

A 1971.

Q Somewhere around August, July of 1971?

A It could very well be.

Q You were telling me, I wasn't there.

Was it around the fall or the summer of 1971 that we are talking about?

A It was warm. That is all I could remember.

Q Let's talk about the year. Was it 1971?

A Yes.

Q Was that the first time he came to you?

1 ks9 Dawson-cross

2 A Yes.

3 Q Was that when you discovered the case?

4 A We could have very well discussed it then.

5 This case?

6 Q Yes.

7 A No, sir.

8 Q When did you discuss this case with him?

9 A It would have been at the latter part of 1971,  
10 during the winter.

11 Q So around November or December of 1971 was the  
12 first time that you discussed the case with him, is that  
13 right?

14 A The case itself, yes.

15 Q On how many occasions have you spoken to him  
16 after that?

17 A You mean up until this day?

18 Q Yes.

19 A Maybe 10, 12 times, probably.

20 Q Going from December of 1971 to today, is that  
21 correct?

22 A Yes.

23 Q When did you mention Georgie for the first time  
24 to Agent Logan?

25 A It could very easily have been the last of 1971

1           ks10                               Dawson-cross                               279  
2           or the first of 1972.

3           Q           But no later than 1972, is that correct?

4           A           I don't think that it would have been.

5           Q           You are certain it wasn't last year, it wasn't  
6           in 1973, is that correct?

7           A           No.

8           Q           You are telling us the first time you mentioned  
9           to Agent Logan and "Georgie" was some time in 1971 or the  
10          early part of 1972, but no later, is that correct?

11          A           It would have been the last part of 1971 or  
12          1972.

13                   MR. ROSENBERG:   At this time if your Honor  
14          please, I ask for a stipulation by the Government --

15                   MR. PHILLIPS:   We object to any stipulations in  
16          front of the jury.   Mr. Rosenberg knows that is not  
17          proper.

18                   THE COURT:   Not this way.

19                   MR. ROSENBERG:   Then I will approach the bench.

20                   (At the side bar.)

21                   MR. ROSENBERG:   I ask the Government to stipulate  
22          to the fact that on the indictment, Frank Pugliese, also  
23          known as Butch is listed on the governmental supplemental  
24          bill of particulars when they refer to an additional co-  
25          conspirator, they put on John Doe, also known as Georgie,

1 ksll

Dawson-cross

2 indicating that it is somebody else other than this  
3 defendant.

4 MR. PHILLIPS: May I see the copy of the addi-  
5 tional bill of particulars.

6 Whatever the additional bill of particular says,  
7 we are not referring in any way whatsoever to the defendant  
8 Pugliese in that additional bill of particulars.

9 MR. ROSENBERG: I don't know what it is supposed  
10 to mean.

11 MR. PHILLIPS: I don't know what it means to  
12 stand up in front of the jury and ask to have the Govern-  
13 ment make insinuations when you know it isn't right and  
14 the indictment stands for itself.

15 MR. ROSENBERG: I am asking for a stipulation  
16 that Pugliese also known as Butch is on the indictment and  
17 on the Government's supplemental bill of particulars, it  
18 says John Doe, also known as --

19 MR. PHILLIPS: I prepared the bill of partic-  
20 ulars. My name probably appears on it. I will repre-  
21 sent to the Court right now, whatever that "Georgie"  
22 stands for is not in connection with Mr. Pugliese. I had  
23 no intention of referring in any way to the defendant  
24 Pugliese when I put that in.

25 MR. ROSENBERG: Can I know who you are refer-

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Dawson-cross

ring to?

MR. PHILLIPS: I would have to have a minute, then I could find out.

MR. ROSENBERG: Let's wait, otherwise I will ask for the stipulation.

THE COURT: You are not going to ask in front of the jury.

MR. ROSENBERG: I was trying, unless, of course, we agree that this can come in, unless the Court rules.

In there when they refer to an additional co-conspirator, John Doe also known as Georgie, they are referring to somebody else other than Butch Pugliese.

THE COURT: What does that mean?

MR. ROSENBERG: Your Honor, here they indicate --

THE COURT: I am aware of it.

MR. ROSENBERG: That when they were talking about a Georgie as an additional co-conspirator, it is somebody other than this defendant.

THE COURT: So what?

MR. ROSENBERG: Here they are saying that this defendant and Georgie are one and the same which in effect, if I read this right and interpret it right, they are talking about two different people. Now they are saying they are one and the same.

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Dawson-cross

1 THE COURT: What they are saying is there were  
2 two people that were called Georgie. One that was called  
3 Georgie by this particular witness.  
4

5 MR. ROSENBERG: I want an offer of proof from  
6 the Government with respect to who they are talking about.

7 THE COURT: Mr. Phillips?

8 MR. PHILLIPS: I would have to have a minute,  
9 but I don't think it should interrupt the cross-examination.  
10 We could continue and I will have an answer at the break.

11 MR. ROSENBERG: Let's take a break now because  
12 I would like that point to come in.

13 THE COURT: Do you have anything else?

14 MR. ROSENBERG: I haven't even begun.

15 (In open court.)

16 THE COURT: We will take our afternoon break now  
17 ladies and gentlemen.

18 (Jury leaves room.)

19 THE COURT: Mr. Dawson, you may step down.

20 We will take ten minutes. That goes for every  
21 body.

22 (Recess.)  
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1 hppl Dawson-cross

T3a 2 (In the robing room.)

3 MR. PHILLIPS: Your Honor, the bill of particulars  
4 speaks for itself. We oppose any stipulation made in  
5 front of the jury with respect to what the bill of  
6 particulars does say. The bill of particulars is hearsay,  
7 the bill of particulars is a legal document which we submit  
8 cannot be used to impeach the testimony of this witness.  
9 If Mr. Rosenberg wants to put me on the witness stand, that's  
10 another question, in order to try to impeach the testimony  
11 of this witness, but beyond that, we oppose any reference  
12 to the bill of particulars in this matter during the cross-  
13 examination of this witness and we particularly oppose what  
14 Mr. Rosenberg has done, in an attempt to enter into a  
15 stipulation in front of the jury.

16 MR. FISHER: Your Honor, the bill of particulars  
17 is filed so as to guide counsel in the course of his pre-  
18 trial preparation. That's for sure. Now, I think defense  
19 counsel have a right to be able to rely on the representa-  
20 tion made of the bill of particulars and rely further  
21 that Mr. Phillips isn't filing these out of thin air.  
22 There must, in fact, be a basis for the information  
23 provided in the bill of particulars and in view of the  
24 testimony under Brady, the defendant is entitled to dis-  
25 covery and whatever basis the government has for the

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Dawson-cross

2       filing of the bill of particulars.       If it were not the  
3       case, your Honor, they might as well be written on wind.  
4       There is no protection afforded to the defendant then, if  
5       during the trial the government may deviate widely from the  
6       representation made.

7               This witness referred to Mr. Rosenberg's  
8       witness also as Georgie.       There can be lots of Georgies  
9       around, maybe even some John Does.

10              MR. FISHER:    If it is the government's position  
11       that Georgie referred to in the supplemental bill is a  
12       person other than the one referred to in the testimony  
13       of this witness, then I think the defendant is entitled to  
14       discovery of whatever information the government has re-  
15       garding to the other Georgie.

16              THE COURT:    I don't think so.

17              MR. FISHER:    Or the minimum, a submission to  
18       the Court in camera of such material so your Honor may  
19       determine it yourself.    It seems awfully convenient for  
20       the government at this point to suddenly come up with a  
21       new co-conspirator.

22              MR. LOPEZ:    Judge, if I can just add, it is  
23       apparent that in the caption of both indictments, Frank  
24       Pugliese was referred to also known as Butchie.       That  
25       is in the indictment in this case.       Now we get a bill

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Dawson-cross

2      of particulars which, as Mr. Fisher has indicated, is a  
3      legal document.      We have a reference there that John Doe  
4      is also known as Georgie.      Now, clearly, that type of a  
5      statement certainly doesn't clarify the indictment as  
6      the bill of particulars should.      If anything, it  
7      obfuscates it for the simple reason we are led to believe  
8      that Georgie is another person.      If indeed Frank Pugliese  
9      was also known as Butchie, and was to be referred to as  
10     Georgie also, we should have become aware of that.      But,  
11     it is apparent, your Honor, Mr. Phillips believed Georgie  
12     was another person.

2      13             That has to be.      All we are asking for your Honor  
14     is, what is the basis and what is the judgment for indicating  
15     in that bill of particulars that this John Doe is also known  
16     as Georgie and for the omission from the caption of the  
17     indictment or any reference of the indictment itself that  
18     Frank Pugliese is known by two names, Butchie and Georgie.  
19     Furthermore, your Honor, the witness definitely says this  
20     information was provided to the government or its authorized  
21     representatives, not in 1973, when the indictments were  
22     prepared, and the bill of particulars submitted, but it  
23     was indeed submitted, if we were to rely on his testimony,  
24     in 1972.      So, we are not talking about a Georgie or many  
25     Georgies.      We are talking indeed about Frank Pugliese,

1 hpp4

Dawson-cross

2 and whether the government knew it at the time of filing  
3 of any of the indictments in this case and at the time of  
4 the filing of the particulars, if in fact they understood  
5 Frank Pugliese was Georgie also, and why in fact the  
6 bill of particulars misled us into thinking it was a  
7 third person.

8 MR. ROSENBERG: Your Honor, let me emphasize  
9 another point. It is listed under additional co-  
10 conspirators. In other words, Frank Pugliese also known  
11 as Butch, listed now as an additional co-conspirator.  
12 I think they had John Pannirello<sup>®</sup> or Harry Pannirello, I got  
13 the bill of particulars outside, and in addition to that,  
14 John Doe also known as Georgie. It is obvious --

15 THE COURT: There are two John Does, aren't  
16 there? There are two John Does.

17 MR. ROSENBERG: But with the one referred to  
18 as Georgie, it is listed other than Frank Butch Pugliese,  
19 is listed as an additional person. Now, if the government  
20 indicates, as he has before on the record, that it was  
21 somebody else, and I asked for an offer of proof, I don't  
22 feel he should come back now and say, "We're going to stand  
23 on the record, you don't have the right to feel that the  
24 bill of particulars means anything at this point." He  
25 either produces another Georgie, according to his represent

1           hpp5                           Dawson-cross

2           tion, or else I'm being permitted to give that stipulation  
3           to the jury, that Butch Pugliese was on the indictment  
4           and an additional co-conspirator was named as Georgie.

5                       THE COURT:    Has everybody made their posi-  
6           tion?

7                       MR. PHILLIPS:  Yes, your Honor.

8                       THE COURT:  There will be no stipulation.

9                       (In open court.  Jury present.)

10           BY MR. ROSENBERG:

11                   Q    Sir, I believe you told us that you informed  
12           Agent Logan that it was in late 1971 or early 1972, when  
13           you told him about the name of Georgie; is that right?

14                   A    Yes, that's right.

15                   Q    And you were cooperating at that time with the  
16           government; is that correct?

17                   A    Somewhat.

18                   Q    You told him everything you knew?

19                   A    I don't think I told him everything I knew at  
20           that time.

21                   Q    At that time?

22                   A    Right.

23                   Q    In other words, you told him about the people  
24           that you dealt with at that time?

25                   A    Yes, I would say so.

1 hpp6

Dawson-cross

2 Q I think you also told us that you dealt in  
3 narcotics in the year of 1972, is that right?

4 A Yes.

5 Q So that after you were cooperating with the  
6 government and an agent, you were still selling narcotics?

7 A If that's -- I was selling narcotics in '72.

8 Q That was after you cooperated with Agent Logan;  
9 is that right?

10 A As far as giving information to that effect, yes.

11 Q Did Agent Logan like give you a free pass, you  
12 tell us what you know and you can sell narcotics?

13 A Definitely not.

14 Q In other words, Agent Logan would not know you  
15 were dealing with narcotics after you were cooperating with  
16 him; is that right?

17 A That's right.

18 Q So the fact that he spoke to you about your  
19 involvement in narcotics, didn't stop you, is that right?

20 A This was -- I don't think Agent Logan knew any-  
21 thing about my involvement in narcotics unless I tell him.

22 Q I know, but that didn't stop you, is that I'm  
23 saying.

24 A No.

25 Q You continued?

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Dawson-cross

1  
2 A Yes.

3 Q When did you stop selling narcotics?

4 A Some time in March or September of '72.

5 Q Did you just decide at that time it's enough of  
6 a life of sin, I'm going to quit?

7 A I don't know whether I would phrase like that, but  
8 that's just what it would amount to.

9 Q It just came to you at that time, that's enough  
10 of business, right?

11 A That's right.

12 Q Did you have enough money by that time?

13 A No, I didn't have enough money.

14 Q Sir, how many people did you speak to with respect  
15 to Georgie?

16 THE COURT: You mean agents and government  
17 officials?

18 MR. ROSENBERG: Yes, your Honor, thank you.

19 MR. FORTUIN: Can we fix a time?

20 Q Any time. How many people did you speak to about  
21 Georgie?

22 A Up until this day?

23 Q Yes. You spoke to Agent Logan, right? We'll  
24 start with him.

25 A I would say maybe eight or ten people.

1 hpp8

Dawson-cross

2 Q Can you give us the best that you can recall with  
3 respect to their names?

4 A To John R., something like that.

5 Q He is an agent?

6 A Yes.

7 Q And you spoke to Logan?

8 A Right.

9 Q You spoke to Mr. Phillips?

10 A Right.

11 Q You told him about Georgie, right?

12 A I guess in a practical sense, I spoke to Mr.  
13 Phillips.

14 Q Let's be technical. When did you speak to Mr.  
15 Phillips about Georgie?

16 A I couldn't swear at this time that I spoke to  
17 Mr. Phillips. I talked to Mr. Fortuin and the agents.

18 Q In other words, they were all in the same room  
19 at the time?

20 A No, sir, I very seldom saw Mr. Phillips.

21 Q How many times did you see Mr. Phillips?

22 A I would say I saw Mr. Phillips four, five times  
23 maybe.

24 Q During what period of time?

25 A Since the indictment, since I came to New York.

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Q Starting from when?

A I think we were indicted in December, something.

Q December?

A Yes.

Q Did you speak to Mr. Phillips about Georgie in December?

A I can't specifically say what I spoke to Mr. Phillips about. I talked to Mr. Phillips. I would think that Georgie's name would have come up, but I can't be definitely sure.

Q When do you think it might have come up, on the first occasion, second occasion, third or fourth occasion that you spoke to him?

A I can't swear as far as Mr. Phillips is concerned.

Q How about Mr. Fortuin?

A I spoke to Mr. Fortuin.

Q When did you speak to him?

A I spoke to Mr. Fortuin about the entire case the first time I saw him.

Q When was that?

A I guess it would have been some time in December or January, most likely December.

Q And you mentioned Georgie then?

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2 A Yes, I did.

3 Q No doubt about that?

4 A It might be -- I've talked to him concerning the  
5 case. It just seemed I would have talked to him about  
6 Georgie the first time I saw him, the first time that we  
7 talked.

8 Q It would seem natural, is that correct?

9 A It seemed that way, yes.

10 Q Who else did you speak to about Georgie?

11 A The agents that arrested me.

12 Q How many other agents? You spoke to Logan and  
13 you told me a John R, you might have spoken to Phillips,  
14 you definitely spoke to Fortuin. This is all about  
15 Georgie. Who else?

16 A Agent Nolan and Agent Fred Mahr.

17 Q When did you speak to Agent Nolan?

18 A It would have been the day I reported here for  
19 indictment some time that night or the next day.

20 Q What day was that?

21 A I can't be sure, whenever we were indicted,  
22 when I had to appear before the judge.

23 Q What month?

24 A It should have been some time in December, I  
25 guess.

1 hpp11 Dawson-cross

2 Q It should have been? It could have been January?

3 A Whenever we were indicted.

4 Q I am asking you was it December or January?

5 A I would say then it was December.

6 Q Are you positive?

7 A If we were indicted in --

2 8 Q I asked you whether you were positive whether or  
9 not it was December that you spoke to him?

10 MR. FORTUIN: Objection. I think he should be  
11 able to explain his answer.

12 THE COURT: Let's let him answer the question.

13 Q Are you positive you spoke to Agent Nolan in  
14 December or might it have been January?

15 A I would say December.

16 Q Are you positive is what I am asking you.

17 A I'm going to say that I'm positive it was in  
18 December.

19 Q It could not have been January?

20 A If it was December, it was January, too.

21 Q Sir, you are telling us about dates in '71, dates  
22 in '72, and you don't know what happened two or three months  
23 ago, is that what you're telling us?

24 MR. FORTUIN: Objection.

25 THE COURT: It's argumentative.

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Q All right. Whenever it was, December or  
January, you spoke to Mr. Fortuin about Georgie, correct?

A That's right.

Q And Mr. Logan, whether it was December or January,  
you spoke to him about Georgie?

A Correct, yes.

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Q And Fred Moore, when did you speak to him?

A It would have been the same time I spoke to Mr. Nolan.

Q December of January?

A Yes.

Q But you are certain you mentioned to each one of these people the name of Georgie, am I correct?

A That's right.

Q When were you shown a picture of Georgie?

A I was shown a picture of Georgie by the Washington Narcotics Squad before I ever came up here.

Q When, was my question.

A I would say for the first time some time during the summer of '72.

Q Are you certain?

A I can't be certain as to the time. I know I was shown the picture by them?

Q Who showed it to you?

A Mr. Logan.

Q Logan?

A Yes.

Q He showed you a picture of Georgie?

A Yes. In -- that would have been the summer of '73.

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Q You mean you are not sure of the year that you were shown a picture? You are not sure whether it is '72 or '73 you were shown a picture of Georgie?

A I just thought about it. It couldn't have been '72. It would have been -- it was some time after the arrest.

Q After you were arrested?

A No, after the arrest of Harry. I can't remember when that was.

Q You don't remember when Harry was arrested?

A No.

Q You remember dealing with Harry?

A Yes. I didn't arrest Harry. I dealt directly wyith Harry.

Q But you were the one who set up Harry, is that right?

A That's right.

Q And you remember dealing with him with eighths, qusrters, halves and ki's?

A Yes.

Q And you remember dates and times and money, right?

A I can't remember dates I can remember --

Q You can't remember dates?

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Dawson-cross

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2 A No.

3 Q You told us about four transactions that  
4 allegedly happened with Georgie in 1971, those you remem-  
5 ber?

6 A I can remember months but not dates.

7 Q Let's talk about months then. When did  
8 you set up Harry, what month?

9 MR. FORTUIN: I object to the use of the  
10 words "set up."

11 MR. ROSENBERG: I will take any word he  
12 would like.

13 MR. FORTUIN: I don't know what the word  
14 means, Mr. Rosenberg.

15 THE COURT: All right.

16 BY MR. ROSENBERG:

17 Q When did you introduce Agent Logan to Harry,  
18 what month?

19 A Some time that first part of '73.

20 Q '73. Incidentally, did you tell Logan that  
21 you were dealing with Harry during 1972 and the early part  
22 of '73?

23 A The early part of what?

24 Q You just told us that Harry Pannirello was  
25 introduced to you by Agent Logan in 1973.

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A I introduced Agent Logan to Harry?

Q In 1973.

A That's right.

Q Did you tell Agent Logan that you were dealing with Harry in 1972 and the early part of 1973?

A No, I couldn't have told him the early part of '73 because I was in Memphis, Tennessee.

Q Didn't you just tell us you introduced Agent Logan to Harry?

A Yes.

Q In 1973?

A I'll explain it to you if you like, sir.

Q I don't want you to explain it to me.  
What time in 1973?

A I think it was January, '73.

Q Is that the early part of '73?

A Yes.

Q That's when you introduced him, is that right?

A That's right.

Q Did you tell Agent Logan, "Despite the fact I was cooperating with you in 1971, I was selling to Harry or Harry was selling to me in 1972 and the early part of '73?"

1 rkai Dawson-cross

2 A That's not true.

ka 3 Q You were selling, you were dealing with  
4 Harry Pannirello in 1972?

5 A In '72.

6 Q Is that correct?

7 A The early part of '72.

8 Q But you didn't deal with him in 1973, is that  
9 what you are telling me?

10 A Yes.

11 Q Did you tell Agent Logan that "Despite the fact  
12 that I was cooperating with you in 1971, I was dealing  
13 with Harry in 1972," did you tell that to him?

14 A I told him but I didn't tell him the time.  
15 At that time I couldn't remember.

16 Q At that time you couldn't remember?

17 A Yes.

18 Q Who refreshed your recollection?

19 A In discussing the case, then I remember. I  
20 thought I had moved before that.

21 Q When you were discussing with Agent Logan, you  
22 then remembered that you were dealing with Harry Pannirel-  
23 lo?

24 A That is right.

25 Q Did he tell you you were dealing with Harry

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Dawson-cross

Pannirello?

A No, I told it to him.

Q Did he make any comment, "After I interviewed you in 1971 and we discussed your cooperation that you continued to sell narcotics after that"? Did he make any comment like that?

A No, it was a long time in between before I saw the agent again.

Q I asked you if you made a comment when you spoke to him.

A Not that I can remember.

Q How many pictures of Georgie were you shown?

A You mean different pictures of Georgie?

Q Yes.

A I don't know how many different pictures I was shown. I was given a number of pictures and I picked Georgie's picture out from it.

Q On how many occasions were you shown a picture of Georgie?

A Mostly every one that I seen after the indictment I saw a picture.

Q So some time in 1972 or 1973, you are not certain of the year, you were shown a picture of Georgie, is that correct, for the first time?

1 rka3 Dawson-cross

2 A That is right.

3 Q Then you are shown a picture by Mr. Logan; then  
4 you are shown a picture by John R; then you are shown a  
5 picture by Phillips; then you are shown a picture by  
6 Fortuin; then you are shown a picture by Fred Nolan of  
7 Georgie?

8 MR. FORTUIN: Objection.

9 A That is untrue.

10 Q Didn't you just tell us that everyone that  
11 interviewed you showed you a picture of Georgie?

12 A You mentioned Mr. Phillips and people like  
13 that Mr. Phillips never showed me a picture of Georgie.

14 Q You said people like that. said people like

15 A The other gentleman you spoke of.

16 Q Mr. Fortuin?

17 A Yes.

18 Q So these two didn't show you a picture?

19 A I saw a picture of Georgie that Mr. Fortuin  
20 had.

21 Q So Mr. Fortuin did show you a picture of  
22 Georgie?

23 A Yes. But not Mr. Phillips.

24 Q And Logan showed you a picture?

25 A No.

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Dawson-cross

2 Q John R. showed you a picture?

3 A Yes.

4 Q Nolan showed you a picture?

5 A No.

6 Q And Fred Moore showed you a picture?

7 A They are partners. The pictures would be  
8 there at the same time.9 MR. ROSENBERG: I ask the government to  
10 produce the pictures shown to this witness.11 MR. PHILLIPS: Again I object to having Mr.  
12 Rosenberg making his requests in the presence of the jury.  
13 I will be happy to discuss it with Mr. Rosenberg but it  
14 should be done outside the presence of the jury.

15 THE COURT: I think so too.

16 (At the side bar.)

17 MR. PHILLIPS: We have to contact the  
18 agent in the witness room to obtain the photograph.19 MR. ROSENBERG: Is that the only picture  
20 that was shown.21 MR. PHILLIPS: I will have Mr. Engel go to  
22 the witness room and ask him to produce the picture and  
23 show it to him.24 MR. ROSENBERG: Is that the only picture  
25 that was shown to him?

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Dawson-cross

MR. PHILLIPS: Ask him.

THE COURT: He said several others were shown and he picked Georgie out.

MR. ROSENBERG: I will ask him, unless I can get a representation from you.

MR. PHILLIPS: I don't know.

MR. ROSENBERG: You will produce one picture now?

MR. PHILLIPS: Yes.

THE COURT: I assume this all happened in Washington?

MR. PHILLIPS: No.

MR. SIEGEL: Your Honor, if I could add one point. I am referring to the discussion we had in the robing room apropos the bill of particulars. I would like to make my position known on the record just very briefly and that is I at this time will claim surprise. I feel, based on this new representation by the government, I am unable to fully represent my client to the best of my ability and therefore, on behalf of myself and all the other defense counsel, I move for a mistrial or, in the alternative, a two-week continuance.

THE COURT: Motion denied.

(In open court.)

1 rka6 Dawson-cross

2 BY MR. ROSENBERG:

3 Q Sir, while we are waiting I think you told us  
4 there were at least five separate occasions that you  
5 were shown pictures of Georgie, is that correct; Logan,  
6 John R. Fortuin, Nolan, Fred Moore, people like that,  
7 on at least five different occasions?

8 A I would say so.

9 Q Would you know right now then if it was  
10 the same picture that was shown to you at all times or  
11 was it different pictures?

12 A I couldn't swear to it that it was the same.

13 Q Give us the best of appraisal at this time.

14 A I don't think that all the pictures were the  
15 same.

16 Q You suspect that it might have been maybe  
17 three or four or perhaps five different pictures, is  
18 that right?

19 A I wouldn't say that.

20 Q More than one, at any rate?

21 A I would think so.

22 Q The first time you were shown a picture was  
23 when, 1973, or was it 1972?

24 A Some time in '73.

25 Q Some time in '73?

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A Yes.

Q Would you know whether or not the picture that they showed you, the person had a beard on?

A I don't think I was shown a picture with a beard. I can't remember one.

Q But you do recall on five separate and distinct occasions --

A I can't swear to five separate.

Q At least five or possibly five?

A I was shown more than one picture.

Q More than one, is that correct?

A Yes. Yes

Q And each time you were shown a picture you didn't know whether the person whose picture you were shown had a beard on it?

A I can't remember one with a beard on it.

Q When was the last time you were shown a picture?

A I think it would have been some time last month.

Q Was that the one that was shown to you by Mr. Fortuin?

A Yes, that is correct.

Q Incidentally, when for the first time did you associate the name of Georgie with Pugliese?

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A When I picked the picture out.

Q That was when?

A After I was indicted and came up here for a arraignment.

Q That was in 1974?

A Yes.

Q So on the four or five other occasions before 1974 when you were shown a picture of Georgie you didn't make the connection, is that right?

A Would you repeat that?

MR. ROSENBERG: Would you repeat it, please.

(Question read.)

(Question read.)

MR. FORTUIN: I object. It's ambiguous.

What connection?

THE COURT: I will permit it.

Q Am I correct, sir?

A I don't understand what you mean.

Q I think you just told us that the first time you were shown a picture of Georgie you did not make the connection between Georgie and Pugliese; isn't that what you just told us?

A That is right, I didn't know his last name at that time, or his real name. I knew him by the other name.

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Q You knew him as Georgie, is that right?

A And Butch.

Q Is that correct?

A That is right.

Q You knew the name Butch?

A Yes.

Q When did you hear the name Butch?

A I heard Paulie call him that.

Q When was that?

A 1971.

Q When you were shown a picture in 1972 of Butch, did you tell Agent Logan that Butch is Georgie?

A In 1972?

Q 1972.

A 1973 when they showed me the picture.

Q The first time you were shown a picture was by Agent Logan?

A That is right.

Q And you knew the name Butch?

A Yes.

Q Did you tell Agent Logan that Butch was Georgie?

A I can't remember whether I did or not. I identified him and that is all.

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Dawson-cross

1                   Q     Did you just tell us before that the first  
2                   time you made the connection between Georgie and Butch  
3                   Pugliese was on the last occasion that you spoke to For-  
4                   tuin; did you tell us that?  
5

6                   MR. FORTUIN:     Objection.

7                   A     I said his real name.

8                   THE COURT:     I will permit it.

9                   Q     Let's talk about a nickname.           The first  
10                  time that you associated Georgie and Butch, was that  
11                  when Mr. Fortuin showed you the picture?

12                  A     Definitely not.

13                  Q     The first time that you made this association  
14                  was when?

15                  A     As far as Georgie and Butch?

16                  Q     Right.

17                  A     I knew it a long time ago, 1971 as far as  
18                  Butch is concerned.

19                  Q     Let's go back to Agent Logan when he showed  
20                  you a picture.

21                             Did you tell Agent Logan in 1973 that Butch  
22                  is Georgie?

23                  A     I can't remember whether I did or not.

24                  Q     Who was the next one that interviewed you  
25                  after that, after Logan interviewed you?     He was the

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Dawson-cross

first one -- this was 1973?

A Yes.

Q What month do you make it?

A In 1973?

Q Yes.

A Some time after the arrest of Harry, after the introduction to Harry.

Q You don't know the month?

A No, I don't.

Q Who was the first agent that showed you the picture?

A Of Harry -- I mean of Georgie?

Q Yes.

A I don't know the agent's name. They took an oral statement.

Q Was it John R., Nolan or Fred Moore?

A I don't know. The next time wouldn't have been either one of those.

Q In other words, there was another one that showed you a picture other than the ones we mentioned?

A Yes.

Q An unnamed person at this point?

A It was an agent in Washington.

Q I understand, but you don't know his name?

1 rk12 Dawson-cross

2 A No, I don't.

3 Q When was that?

4 A Some time in '73.

5 Q Some time in '73?

6 A That is right.

7 Q What is your best guess of the month? I

8 know you can't give me a day but give me a month.

9 A It would be some time during the summer of

10 '73. It wasn't important for me to remember at that

11 time.

12 Q Did you tell that unnamed agent that Georgie

13 is Butch?

14 A I can't remember.

15 Q You can't remember that?

16 A It wasn't that important.

17 Q So you know the first two agents that showed

18 you a picture of Butch; you are not sure whether you

19 told it to them, correct?

20 Who was the next one that interviewed you and

21 showed you a picture of Butch?

22 A It would have been Agent Nolan and Agent Moore

23 Q Nolan or who?

24 A It would have been Agent Nolan and Agent

25 Moore.

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Q Good. When was that?

A It would have been some time in December of '73 or the first of this year.

Q That is before you spoke to Mr. Fortuin?

A That is right.

Q Did you tell Agent Moore or Nolan that Butch is Georgie?

A I can't remember what name I might have used at that time. I called him both names. I could have easily said --

Q Never mind what you could have said. Did you tell any one of the agents that Butch was Georgie?

MR. FORTUIN: I object.

THE COURT: The witness said he doesn't remember.

Q Is that your answer?

A I used both names. Normally I would use Georgie. I would say Georgie, normally.

Q I am asking you on the third occasion that you spoke to one of the government agents did you say that Butchie was Georgie?

MR. ELLIS: Your Honor, I would like it made clear when we use the word "Butch" --

MR. ROSENBERG. Butch Pugliese.

1 rk14

Dawson-cross

2 THE COURT: Yes.

3 Q On at least the third occasion or fourth  
4 occasion you spoke to an agent and he showed you a  
5 picture of Butch Pugliese, did you tell him that that is  
6 Georgie?

7 A I can't remember, sir.

8 Q You can't remember?

9 A No, sir.

10 Q But you do know on the last occasion that  
11 you spoke to Mr. Fortuin, that you told him that Butch is  
12 Georgie, right, that you are positive of?

13 A I haven't said that because I can't even be  
14 positive of that. I said I used both names and I  
15 can't remember what time I used what name.

16 Q On the occasion that you used the name of  
17 Georgie did anybody say "Georgie is Butch," when you  
18 looked at the picture?

19 A I can't remember that.

20 Q You can't remember that either?

21 A No.

22 Q Was this the picture that was shown to you?

23 A I have seen that picture before?

24 Q On how many occasions?

25 A I couldn't swear to the number of times.

rk15

Dawson-cross

I have seen it before.

Q Was it at least five times?

A I can't say that. I wouldn't think it was the same picture each time. It could have easily been, but I don't think it was.

Q On how many occasions would you say you saw this picture?

A The picture of Georgie?

Q This picture.

A This particular picture, I wouldn't be able to give you an answer. I couldn't give you an accurate answer.

Q Would you say it was more than once?

A I would say that it could have been.

Q Was this the picture that Mr. Fortuin showed you?

A It would be impossible for me to tell whether that is the picture that Mr. Fortuin showed me. I have seen a picture of Georgie from Mr. Fortuin, but I can't swear which picture it was.

Q Do you know what agent showed you this picture?

A No, I can't swear that I have seen that picture.

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Dawson-cross

Q You can't say you have seen this picture?

A No. I have seen a picture similar to that.

MR. ROSENBERG: May I approach the bench?

THE COURT: Yes. I think we ought to mark

that picture.

(Government's Exhibit 79 was marked for  
identification.)

xx

4B1 1 rks Dawson-cross

2 (At the side bar.)

3 MR. ROSENBERG: At this time I would like a  
4 Wade hearing. I think there is an element, or at least  
5 the possibility of an element of the suggestive identifica-  
6 tion.

7 MR. PHILLIPS: I don't see that there is any  
8 possibility of any suggestive identification not on the  
9 record that has been adduced up to now. Mr. Rosenberg  
10 has had plenty of time to ask for a Wade hearing.  
11 I suggest this is dilatory in asking for a Wade hearing  
12 after 40 minutes of cross-examination and several hours of  
13 direct examination.

14 MR. ROSENBERG: I think if you recall at the  
15 beginning of the day, I indicated I might ask for a Wade  
16 hearing. It was discussed before. The reason why it  
17 came up now is that this witness has indicated that on  
18 five separate occasions, at least, he was shown a picture.  
19 He doesn't remember whether he made the connection or  
20 Georgie to Butch and now for the last time when Mr.  
21 Fortuin showed it to him, he has a recollection that  
22 Georgie was Butch, but he did not admit on the other  
23 occasions when he looked at the picture that that was  
24 Georgie.

25 MR. FORTUIN: I think that misstates what he

ks2

Dawson-cross

1           ks2                               Dawson-cross  
2       said.    I think he said he didn't make the connection  
3       between Georgie and Butch but he just didn't always use the  
4       name Butch but he on every occasion picked it out as the  
5       person he described as Georgie.       That is the first point.

6               The second point is, this is not a situation  
7       like a bank robbery when he has seen the guy once.    He  
8       testified to dealing with this guy over several years and  
9       he has seen him many occasions.

10               MR. ROSENBERG:   He hasn't seen him for the  
11       last three years.       The picture might have been a picture  
12       of this defendant taken several years ago, I am not certain  
13       when it was taken, without a beard.       At least he looks  
14       pretty young.

15               MR. FORTUIN:   Which would mean it is not  
16       suggestive.

17               THE COURT:    Let me let the jury go.

18                               (In open court.)

19               THE COURT:    You get a break, it is a holiday.  
20       I will let you go now.

21               Mr. Marshal, will you let the jury go now.

22                               (Jury leaves room.)

23               THE COURT:    Mr. Rosenberg, I have taken a look  
24       at what is now marked as Government's Exhibit 79.

25               MR. DOWD:    Your Honor, the witness is still

1 ks3 Dawson-

2 there.

3 THE COURT: All right, Mr. Dawson, step out,  
4 please.

5 (Witness leaves room.)

6 THE COURT: Thank you for bringing it to my  
7 attention.

8 I don't see how this picture could be that  
9 suggestive. My guess is it was taken five years ago.

10 DEFENDANT PUGLIESE: May I take a look at that?

11 THE COURT: Yes.

12 DEFENDANT PUGLIESE: I was about 16 years old  
13 when this was taken.

14 THE COURT: You were about 16 years old in that  
15 picture?

16 MR. CURRAN: Your Honor, if the defendant was  
17 16 then, I think from the picture the defendant would be  
18 19 now and if he wants to testify, the place to do it is  
19 up there.

20 THE COURT: I am not worried about that right  
21 now.

22 Do you still want a Wade hearing?

23 MR. ROSENBERG: Absolutely. I want to finish  
24 with this witness now then go into the other agents that  
25 spoke to him.

1 ks4

2 THE COURT: You want to finish it, you mean  
3 cross-examination?

4 MR. ROSENBERG: Not the cross. Now I am going  
5 into the Wade hearing. I want to start with this witness  
6 in the Wade hearing.

7 THE COURT: I will think about it.

8 Be back here at a quarter of ten tomorrow.

9 MR. PHILLIPS: Your Honor, I would like to be  
10 heard on two other legal issues if I may if your Honor is  
11 going to adjourn for the day.

12 THE COURT: Go ahead.

13 MR. PHILLIPS: Your Honor, we intend to offer  
14 after this witness testifies, or has finished testifying,  
15 testimony from Agent John Nolan as to prior out of court  
16 identifications made by Harry Pannirello to Agents Logan  
17 and Moore by virtue of their identifying both Joseph  
18 DiNapoli and Henry Salley from a group of photographs.  
19 We submit that this testimony is admissible under the  
20 following Second Circuit cases.

21 United States against Forzano, 190 Fed. 2d  
22 page 687 at page 689.

23 United States versus DeCisco, 329 Fed. 2d page  
24 929.

25 United States versus Sacasas, 381 Fed. 2d.

1 ks5

2 United States versus Miller, 381 Fed. 2d 529  
3 and also 4 Wigmore on Evidence, Section 1130.

4 The other item your Honor refers to the Govern-  
5 ment's offer with respect to narcotics that were seized  
6 in the apartment at 150 West 225th Street which we submit  
7 was at that time occupied by Basil and Estelle Hansen and  
8 the seizure took place in the early morning hours of  
9 October 4, 1973, the day before the indictment having  
10 been filed in this case which was 73 Crim. 930 or 931, I  
11 don't remember which.

12 In any event, we intend to offer that evidence  
13 or those narcotics consisting of approximately three-  
14 quarters of a kilogram of heroin.

15 In addition, we intend to offer heroin that was  
16 seized at the apartment at 3139 New England Thruway  
17 occupied by John Springer. This seizure took place in  
18 the late evening hours of December 3, 1973, three days  
19 before the superseding indictment in this case, 73 Crim.  
20 1099 which was filed and we submit that this is admissible  
21 first because each of the seizures or possession of  
22 narcotics took place during the term of the conspiracy as  
23 charged in the indictment.

2 24 Secondly, although it would appear that the  
25 source for both of these individuals of the narcotics,

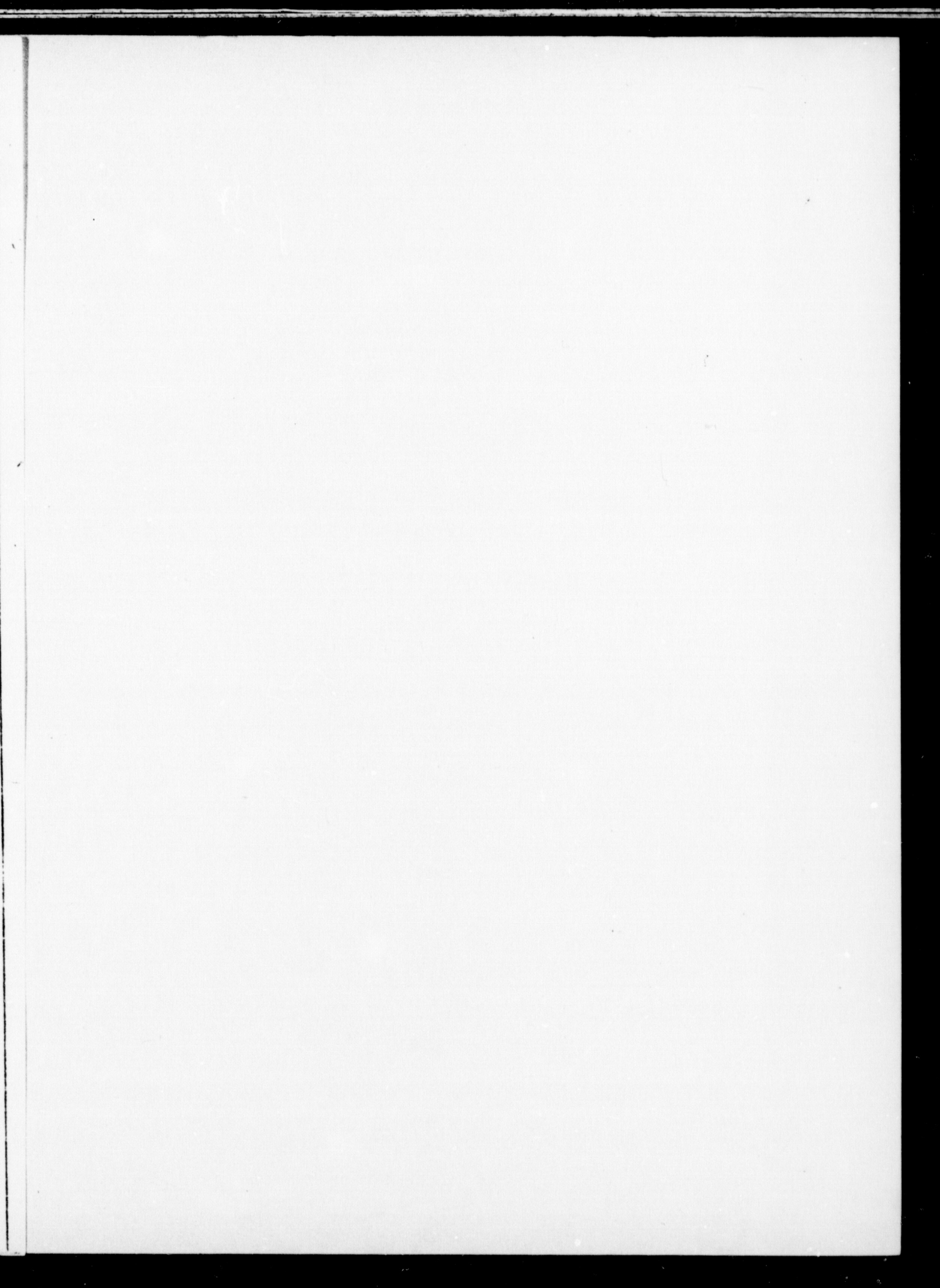
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specifically Harry Pannirello, John Pannirello, Jimmy Provitero while they were arrested in February 1973 and while it could be argued that other members in addition had withdrawn from the conspiracy either voluntarily or involuntarily by virtue of an arrest or indictment, we submit that under the authority of the following cases, that this testimony or evidence is admissible.

United States versus Costello, a Second Circuit case, 352 Fed. 2d page 848, at page 854.

Lutwak versus United States, 344 United States 604 and United States versus Ganey at 417 Fed 2d, page 1116 at page 1120. Specifically Footnote No. 3 of that particular case.

The Ganey case is a Judge Friendly opinion where he quotes from his own opinion in Borelli wherein he says that the essence of the conspiracy charge is the existence of the agreement and acts subsequent to withdrawal by members of the conspiracy are relevant to show the existence of the agreement and we submit this is also what Costello and Lutwak stand for and that acts subsequent to the withdrawal from a conspiracy are admissible to show the existence of the conspiracy and more specifically in this case, to show the role played by Basil Hansen, Estelle Hansen, two defendants who are fugitives in this



1 ks7

2 case as well as John Springer, each of whom the Govern-  
3 ment contends are retail distributors of narcotics and the  
4 fact they were in the process of cutting and repackaging  
5 heroin at the time agents go in there in October and  
6 November in 1973 are probative of their roles in the con-  
7 spiracy.

8 MR. FISHER: May I inquire of the Government if  
9 it intends to offer this evidence against each of the  
10 defendants?

11 MR. PHILLIPS: Yes, your Honor.

12 THE COURT: That is what I thought.

13 MR. LOPEZ: Your Honor, may I make one further  
14 inquiry.

15 Does the Government very shortly also intend  
16 hopefully to introduce the seizure of the money of Februar-  
17 3, 1972, the \$1 million?

18 THE COURT: What are you so hopeful about?

19 MR. LOPEZ: I am not hopeful. I am saying  
20 they are hopeful.

21 THE COURT: I don't know what they are going  
22 to do.

23 MR. PHILLIPS: We intend to, yes.

24 MR. LOPEZ: Your Honor, what I would like to  
25 in connection with the DiNapoli identification, I would

1 ks8

2 like to look into these cases cited by Mr. Phillips and I  
3 would like an opportunity to answer them tomorrow and I  
4 also request all argument tomorrow or on a date convenient  
5 to the Court with regard to the \$1 million if there is no  
6 other foundation testimony that the Government plans to  
7 offer in connection with their offer of proof as far as the  
8 \$1 million; so at the same time, I will argue both points.

9 THE COURT: I don't think we ought to get into  
10 the million dollars at this point. Let's work on one  
11 problem at a time.

12 MR. LOPEZ: May I answer the identification  
13 problem some time after the Wade hearing on Georgie?

14 THE COURT: I don't even know if there is going  
15 to be a Wade hearing. I will decide that between now  
16 and tomorrow.

17 MR. PHILLIPS: With respect to the million  
18 dollars and the relevancy, we argued this before the trial  
19 began for at least an hour.

20 THE COURT: I am aware of it.

21 MR. LOPEZ: I am seeking to reargue it again  
22 in view of the evidence.

23 THE COURT: I understand. Let me take one  
24 problem up at a time.

25 MR. PANZER: Your Honor, with respect to the

ks9

1 subsequent seizures; could we get some feeling from the  
2 Government what particular defendants were out of the  
3 conspiracy at the time these seizures took place? They  
4 made a contention that the conspiracy had ended by the  
5 time certain particular defendants were no longer con-  
6 sidered. I would like to know which ones those are.

7 THE COURT: I understand.

8 Mr. Pollak.

9 MR. POLLAK: Your Honor, I would also, as Mr.  
10 Lopez does, reserve the right to argue further orally on  
11 the question of identification of Salley after having  
12 checked the cases. However, I would at the present time,  
13 I would say that it would in any event be impermissible  
14 since the Government is seeking to impeach its own witness  
15 after going through the courtroom and could not identify  
16 Salley and I submit in any event, regardless what those  
17 cases say, it will be impermissible for them to impeach  
18 their own witness. If the Court feels there is a  
19 possibility of this, I would respectfully ask for a Wade  
20 hearing on the out-of-court identification.

21 THE COURT: A Wade hearing has to do with  
22 an in-court identification. I don't know what kind of  
23 Wade hearing you would have on an out-of-court identifica-  
24 tion.  
25

1 ks10

2 MR. POLLAK In regard to whether the pictures  
3 were suggested and the number of photographs shown.

4 THE COURT: That would all come out on cross-  
5 examination of the witness who was going to testify if I  
6 permit him to testify and I am not sure I am.

7 MR. POLLAK: I agree, your Honor, but I submit  
8 that to let it come out at this point might necessitate  
9 a mistrial because if on cross-examination it turns out he  
10 was shown five photographs and four of them were females  
11 and one was a photograph of Salley and he said this is the  
12 one that is Salley, certainly at that point the jury has  
13 heard it and I submit the error could not be corrected.

14 I think we have to have a hearing beforehand if  
15 the Court is considering allowing such testimony in.

16 THE COURT: I understand your argument.

17 Mr. Leighton?

18 MR. LEIGHTON: I was wondering whether or not you  
19 would request of the Government to produce Special Agent  
20 Logan tomorrow for an additional cross-examination.

21 When he was testifying last time he did mention  
22 that he did write a statement or take a statement from this  
23 witness Mr. Dawson then put it down into official BNDD forms  
24 and these forms I think as 3500 material was not turned  
25 over until last night. If I had those forms in my

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possession at the time Agent Logan was testifying, there would have been added or additional cross-examination of him. I would ask your Honor to request of the Government to produce Agent Logan tomorrow.

THE COURT: I will think about it.

Yes?

MR. ROSNER: Sort of as amicus, I think there is a case that the Government may have inadvertently omitted. I think Judge Weinfeld wrote an opinion in United States against Arcuri holding inadmissible out of court photographic identification for any purposes. I am almost positive it is Arcuri.

THE COURT: Okay.

MR. SIEGEL: May I get a reading from the Government when they propose to introduce this evidence against John Springer?

THE COURT: My guess would be that if cross-examination of Dawson finishes early tomorrow, they will try to do it late tomorrow.

MR. SIEGEL: It is my intention that I wish to be heard further on the point of the law of admitting such evidence once the conspiracy in fact has been terminated and once an indictment has been filed. The admission in evidence of items which occurred subsequent to the

1 ksl2

2 completion of the conspiracy, and I wish to be heard  
3 further,

4 THE COURT: That is why I suggest we all come  
5 back tomorrow at a quarter of ten.

6 MR. DOWD: Do we presume there will be no  
7 additional new witnesses because we are not getting any  
8 3500 material.

9 THE COURT: I used to work for a guy whose  
10 favorite expression was don't assume a blankety-blank  
11 thing.

12 I suggest you follow that.

13 MR. RICHMAN: After you dismiss the rest of us,  
14 I would like to approach and find out what I am doing  
15 tomorrow.

16 THE COURT: Come on in now after we adjourn.

17 (Whereupon, an adjournment was taken to  
18 Tuesday, February 19, 1974, at 9.45 o'clock a.m.)

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas Frank Dawson	2599	2699		

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